

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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In Re:) Case No. 19-30088
) Chapter 11
PG&E CORPORATION AND PACIFIC)
GAS AND ELECTRIC COMPANY) San Francisco, California
) Wednesday, October 23, 2019
Debtors.) 10:00 AM
)

DEBTORS' MOTION PURSUANT TO
11 U.S.C. SECTIONS 363(B) AND
105(A) AND FED. R. BANKR. P.
6004 AND 9019 FOR ENTRY OF AN
ORDER (I) AUTHORIZING THE
DEBTORS TO ENTER INTO
RESTRUCTURING SUPPORT
AGREEMENT WITH THE CONSENTING
SUBROGATION CLAIMHOLDERS,
(II) APPROVING THE TERMS OF
SETTLEMENT WITH SUCH
CONSENTING SUBROGATION
CLAIMHOLDERS, INCLUDING THE
ALLOWED SUBROGATION AMOUNT,
AND (III) GRANTING RELATED
RELIEF (THE "SUBROGATION
SETTLEMENT AND RSA MOTION")
[3992]

STATUS CONFERENCE

APPLICATION OF THE OFFICIAL
COMMITTEE OF TORT CLAIMANTS
FOR ENTRY OF AN ORDER (I)
CONFIRMING THE SCOPE OF
EMPLOYMENT OF BAKER &
HOSTETLER LLP, OR
ALTERNATIVELY (II) AMENDING
THE ORDER APPROVING
APPLICATION OF THE OFFICIAL
COMMITTEE OF TORT CLAIMANTS
PURSUANT TO 11 U.S.C. SECTION
1103 AND FED.R.BANKR.P. 2014
AND 5002, FOR AN ORDER
AUTHORIZING RETENTION AND
EMPLOYMENT OF BAKER &

HOSTETLER LLP, EFFECTIVE AS
OF FEBRUARY 15, 2019 (DOC.
NO. 1331) (THE RETENTION
ORDER) [4018]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

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25

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PG&E Corp., Pacific Gas & Electric Co.

SAN FRANCISCO, CALIFORNIA, WEDNESDAY, OCTOBER 23, 2019,

10:00 AM

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(Call to order of the Court.)

THE BAILIFF: All rise. The Court is now in session,
the Honorable Dennis Montali presiding.

THE COURT: Good morning. Crowded house.

Good morning, everyone.

IN UNISON: Good morning, Your Honor.

THE BAILIFF: This the Court's 10 a.m. calendar, in
the matter of PG&E Corporation.

THE COURT: Mr. Karotkin, you're ready to go?

MR. KAROTKIN: Good morning, Your Honor. Steven
Karotkin, Weil, Gotshal & Manges, for the debtors.

Yes, we are. I think you wanted the first matter, the
Baker motion.

THE COURT: Yes. Let me just make an opening comment
that's related to nothing except everything. I noticed in the
last round of briefing that there's a little bit of emotion
that's creeping in the words and lines, so I'm going to ask
counsel to downplay the energy a little bit and stop making
references to hedge funds or opponents by their name when it
isn't relevant; Elliott on the one hand or Baupost on the other
and so on. And just stick with the functional terms if you --
there's a reason to name a company for something important,

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1 that's fine. But I just want to keep our arguments a little
2 bit more balanced and civilized. Nothing specific beyond that.

3 Okay. Let's go. Who's going to make the presentation
4 for the TCC on the motion?

5 Good morning.

6 MS. MORRIS: Good morning, Your Honor. Kimberly
7 Morris of Baker Hostetler on behalf of the official committee
8 of tort claimants.

9 THE COURT: All right. Good morning, Ms. Morris.

10 MS. MORRIS: I'd like to reserve two minutes. I
11 noticed that you gave us each ten minutes, and I'd --

12 THE COURT: Yeah, it was a lot of time.

13 MS. MORRIS: -- like to reserve two. Yeah.

14 THE COURT: I have one opening question for you.

15 MS. MORRIS: Um-hum.

16 THE COURT: I was confused in the papers. I think it
17 kind of shows up a couple of times, but I'll focus on page 6 of
18 the motion. The top, it -- the following sentence seems to be
19 completely incorrect. "The state court litigation involves
20 claims estimation, confirmation issues, and potential
21 compromise of controversies." The last time I checked, it
22 should -- it would have none of those involved.

23 MS. MORRIS: Well --

24 THE COURT: It's a claim by a group of plaintiffs
25 against the utility or the utility and the parent for their

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1 damages out of the fires. There's nothing about claims
2 estimation, nothing about compromises, nothing about any of the
3 things that are mentioned there. So what does that mean to
4 this motion?

5 MS. MORRIS: Sure, Your Honor. I believe that when
6 Your Honor granted the relief from stay for -- to allow the
7 Tubbs claimants to proceed in the state court litigation, that
8 you recognized the importance of the Tubbs proceeding to --

9 THE COURT: I did.

10 MS. MORRIS: -- the estimation and the data points
11 that would result from that proceeding as to the debtors'
12 liability for the Tubbs fire.

13 THE COURT: Right.

14 MS. MORRIS: And the debtors, in connection with the
15 various motions that they've made, said that the Tubbs issue
16 was one of the gating issues with respect --

17 THE COURT: Well, I know.

18 MS. MORRIS: -- to this proceeding.

19 THE COURT: That's obvious that we -- that's so
20 obvious, you don't even have to repeat it.

21 MS. MORRIS: Um-hum.

22 THE COURT: It's obvious; that's why I granted it.
23 But there was nothing about granting the relief from stay that
24 said, by the way, Superior Court, would you please deal with
25 estimation or confirmation issues or, by the way, for any

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1 compromises.

2 MS. MORRIS: Yeah, you're right, Your Honor. It's
3 just the data points that were resolved from that trial as to
4 the debtors' liability.

5 THE COURT: Right. So the data point will be a
6 verdict, perhaps --

7 MS. MORRIS: Um-hum.

8 THE COURT: -- that is favorable for one side or
9 favorable to the other side.

10 MS. MORRIS: That's right.

11 THE COURT: What else will there be? Maybe -- unless
12 there's some specific findings that are relevant to that
13 inquiry.

14 MS. MORRIS: Well, the debtors' liability for the
15 fires will affect the estimation of the Tubbs claim. Judge
16 Donato --

17 THE COURT: I asked what the outcome in the court will
18 be, not where they will go with Judge Donato or me --

19 MS. MORRIS: Um-hum.

20 THE COURT: -- or anywhere. I would imagine a
21 superior court judge will sign a verdict or an order, whatever
22 the correct proceeding is, that says, Plaintiff recovers X or
23 Defendant recovers Y or perhaps responding to a special
24 interrogatories. But beyond that, I don't know that anything
25 would be happening.

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1 MS. MORRIS: Yeah, and the practical effect of that is
2 that the individual plaintiffs, if they do receive a judgment,
3 they can't go enforce that judgement because I think your order
4 makes clear they can't do that.

5 THE COURT: So does the --

6 MS. MORRIS: That's right.

7 THE COURT: So does the Bankruptcy Code.

8 MS. MORRIS: Yeah.

9 THE COURT: But that's not the point. The point is
10 your motion today is to take an action -- it reads as though
11 you're going to take a more broader role in the Superior Court
12 dealing with bankruptcy issues, which doesn't seem relevant.

13 MS. MORRIS: It actually affects the estimation
14 issues --

15 THE COURT: I know it affects --

16 MS. MORRIS: Yeah.

17 THE COURT: -- but pretend I'm the Superior Court
18 judge now --

19 MS. MORRIS: Um-hum.

20 THE COURT: -- magically, down the street, and we're
21 here at the opening of trial, and say, why are you bothering me
22 with bankruptcy court issues? We're here to decide if the
23 defendant is guilty -- is liable to the plaintiffs. Period.

24 MS. MORRIS: That's right, and the issues that will be
25 litigated in the state court proceeding are some of the very

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1 same issues that we're going to be litigating in the estimation
2 proceedings before Judge Donato. Just by way of example, some
3 of --

4 THE COURT: I know it. I got it. I'm the one that
5 teed Judge Donato for you, so I know that.

6 Okay. Let's go back to you, opening comment about
7 today's motion.

8 MS. MORRIS: Well, given the overlapping issues, Your
9 Honor, will be addressed in both proceedings and especially
10 given the truncated time frame in which we're -- the Tubbs
11 trial is proceeding and the estimation trial is proceeding, in
12 essentially one-tenth of the time that it would normally take
13 to try these issues, the coordination of the efforts between
14 what's going on in the Tubbs case and what's going in the
15 estimation case, the same documents, the same witnesses,
16 potentially the same experts, and the same issues to be decided
17 by both judges, make it essential that we have the ability to
18 participate in that trial.

19 THE COURT: But why on PG&E's nickel? In other words,
20 you essentially want me to say that the TCC and its lawyers and
21 its experts are on the payroll for everything else they are in
22 the state court litigation, where, had there been no
23 bankruptcy, the state court plaintiffs aren't quite capable of
24 proving their case.

25 MS. MORRIS: Your Honor, the estimation proceeding is

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1 essentially now on three tribunals. We're before Judge Donato
2 for the majority of the fires. We're before Judge Jackson for
3 purposes of the legal liability, the actual causation issue
4 that will inform what Judge Donato does with those Tubbs
5 claims, and then before Your Honor for the inverse condemnation
6 issue.

7 THE COURT: And no one on the debtors' side has
8 questioned the scope of your firm's engagement for two of those
9 three things. No one has questioned that, and I don't. The
10 only question -- the only question is, do you and your
11 colleagues go down the street to the Superior Court and file
12 briefs and take positions as -- almost as a co-plaintiff in a
13 manner that, again, that you can send the bill to PG&E, which
14 doesn't seem -- it's what they've complained about, and I think
15 I'm persuaded that that's a reasonable argument, unless you can
16 convince me otherwise.

17 MS. MORRIS: Yeah, Your Honor, the buildup of the
18 legal issues in the estimation proceeding and the documents
19 that we're looking at and the witnesses that we're talking to
20 are the same exact witnesses that the Tubbs fire victims -- or
21 the Tubbs plaintiffs' lawyers are looking at in their
22 proceeding. In fact, we've even talked to Mr. Orsini about
23 cross-designated -- cross-designating some of the 30(b)(6) and
24 PMK depositions in the state court proceedings.

25 So we believe that our employment application, our

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1 retention application allows us the ability to participate, not
2 as presenting facts and evidence in the court -- the
3 plaintiffs' lawyers will do that -- but in coordinating with
4 the plaintiffs' lawyers, who are looking at the same exact
5 issues that we are, who are examining the same exact issues as
6 we are --

7 THE COURT: Ms. Morris, the point is, do you do that
8 with the plaintiffs, or do you do it with PG&E paying the
9 bills? Isn't that what it comes down to? I mean, I realize
10 that you believe and your clients believe that PG&E should be
11 paying all the bills, and that's for another day. The question
12 is, for the work you're doing today and the work tomorrow and
13 next week and last week, you're getting paid -- no one's
14 questioning that -- and -- but if you take an active role in
15 the Superior Court, the debtors' position is that's not
16 appropriate.

17 Just tell me why that is appropriate. But you're just
18 repeating stuff that I know. So tell me why -- what I don't
19 know -- why --

20 MS. MORRIS: Because it --

21 THE COURT: -- I should overrule their objection.

22 MS. MORRIS: If the ultimate verdict from the Tubbs
23 trial were only affecting the fourteen preference plaintiffs,
24 then I believe Your Honor would be absolutely correct.
25 However, that verdict the tens of thousands of Tubbs claimants.

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1 THE COURT: Well, of course it will. Of course, it
2 will.

3 MS. MORRIS: And if that is to be --

4 THE COURT: It'll affect them, prospective -- I mean,
5 affirmatively, if it's a very good result, and very negatively
6 if it's an adverse result.

7 MS. MORRIS: And we believe that we need to protect
8 the interests of those tens of thousands of claimants by
9 looking at evidence and making sure it's presented in a way
10 that present -- that protects the interests of those claimants.
11 And in fact, one of the cases cited by the debtors, that's
12 exactly what the committee had done. In the Continental
13 Airlines case, they sought authority for two things. One was
14 to participate in the estimation of a class claim for the
15 benefit of the committee, and the second was to represent those
16 individual class claimants.

17 The court rejected the ability of the committee
18 lawyers to represent the individual class claimants, and that's
19 not what we're trying to do here. They have very fine lawyers.
20 What we are trying to do is what the judge allowed the lawyers
21 to do in the Continental Airlines case, which is file briefs
22 and participate in the trial to the extent it's necessary to
23 protect the claimants.

24 THE COURT: But the debtors' position isn't that you
25 can't take a role that's -- that you can't, in effect, be

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1 writing the brief for the plaintiffs' lawyers, and -- they
2 don't use the term -- but effectively acting as co-trial
3 counsel. They don't question your right to be there. I doubt
4 Mr. Orsini's going to ask the Superior Court judge to throw you
5 out of the courtroom. They've said in papers here that they
6 don't object to your involvement; it's the more specific
7 thing -- well, anyway, I'll let them respond.

8 MS. MORRIS: Your Honor, I'm happy to rest on our
9 papers --

10 THE COURT: Okay.

11 MS. MORRIS: -- and so I'll turn it over and just
12 reserve time, if you have any further questions for us.

13 THE COURT: Okay. Now, the OCC filed a -- kind of a
14 position that doesn't state a position, so I'm assuming that --
15 I mean, this is the most emphatic position I've seen from the
16 OCC. We reserve all of our rights. So are you here reserving
17 your rights?

18 MR. LEBLANC: Your Honor, Andrew LeBlanc of Milbank,
19 on behalf of the official committee of unsecured creditors.

20 Your Honor, the reason we filed that is, while we're
21 sympathetic to the debtors' position, we understand their
22 position, we didn't take a position on this. What we are
23 concerned with is that, to the extent that the TCC is permitted
24 to participate in some meaningful way at the -- in the state
25 court proceeding, we have asked to have rights of

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1 participation; meaning, we've asked to observe depositions that
2 are occurring there given the relevance of those depositions
3 to --

4 THE COURT: Well, is there any opposition to that?

5 MR. LEBLANC: The debtors have opposed that, so --

6 THE COURT: But there's nothing before me to --

7 MR. LEBLANC: No. And I agree, Your Honor. But what
8 I -- the point of our reservation of rights is that, if the
9 Court were to permit the TCC to go down to the state court,
10 participate in the way that they've asked, and that entitled
11 them to be present at depositions of witnesses that are going
12 on down there, we would ask for the same rights, to the extent
13 that they were granted those rights.

14 We're not asking anything else; there's nothing before
15 you. We did make that request of Judge Donato; he denied it,
16 saying that that was a question for the state court tribunal,
17 whether or not we could be present for depositions.

18 THE COURT: So what? Why shouldn't I say the same
19 thing?

20 MR. LEBLANC: Well -- and that's why, Your Honor, we
21 haven't asked for that, unless the TCC is granted it.

22 THE COURT: Well -- but if I deny today's motion, the
23 TCC is free to ask the Superior Court judge if they can have
24 a -- participate.

25 MR. LEBLANC: They could, Your Honor, and we could

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1 make the same request, although it's a little -- there's a
2 quirk of our existence as a federally, statutorily created
3 entity that creates a odd circumstance of asking for rights to
4 participate there. We -- all we're asking for -- all we've
5 asked for from the debtors --

6 THE COURT: Well -- but you know why? You didn't -- I
7 mean, even though it was federal, federal, you certainly were
8 asked to participate in the FERC litigation, and you did.
9 And --

10 MR. LEBLANC: We --

11 THE COURT: I mean, the TCC hadn't taken a role or
12 wasn't even active then. But that's the --

13 MR. LEBLANC: Sure.

14 THE COURT: -- kind of thing that would be normal.
15 The thing that makes this one a little different is why we're
16 talking -- but anyway --

17 MR. LEBLANC: Understood. And our --the only reason
18 for our filing, Your Honor, was to say that if they're able to
19 be present at depositions -- and we've asked for the same
20 rights. Not to question witnesses, but just to be able to
21 observe these depositions so that we have that information for
22 the purposes of the estimation proceedings that will follow.
23 But it's not -- we haven't made the request of you, and we're
24 not making it now, unless it's -- unless a similar right is
25 granted to them.

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1 THE COURT: Okay.

2 MR. LEBLANC: Thank you, Your Honor.

3 THE COURT: Got it. Thank you.

4 Good morning.

5 MS. LIOU: Good morning, Your Honor. For the record,
6 Jessica Liou --

7 THE COURT: Ms. Liou.

8 MS. LIOU: -- from Weil, Gotshal & Manges, on behalf
9 of the debtors.

10 Your Honor, just to correct one of the statements that
11 Mr. LeBlanc made, the debtors have not opposed the unsecured
12 creditors' committee monitoring the state court proceedings and
13 dialing in on the phone for depositions. Our position,
14 obviously, is that they should not participate in questioning
15 in those proceedings.

16 THE COURT: In the depositions or in the trial?

17 MS. LIOU: In the depositions, and monitoring the
18 trial is fine as well.

19 THE COURT: But monitoring the trial means monitoring;
20 it doesn't mean --

21 MS. LIOU: It doesn't mean active participation.

22 THE COURT: I mean, it's up to the Superior Court
23 judge to decide whether --

24 MS. LIOU: That's --

25 THE COURT: -- to let anybody --

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1 MS. LIOU: That's absolutely correct, and I presume
2 they will have to make a motion to intervene or appear as a
3 party. And the judge will have to decide that issue in the
4 state court.

5 THE COURT: But what about the TCC?

6 MS. LIOU: Yes.

7 THE COURT: Is the TC -- what's the role -- would you
8 believe that even without today's motion or even if I denied
9 this motion, can't the TCC monitor the depositions or
10 participate --

11 MS. LIOU: Well --

12 THE COURT: -- the same way?

13 MS. LIOU: Yeah, we stated in our papers very clearly
14 that we are not opposed to them monitoring the --

15 THE COURT: Right.

16 MS. LIOU: -- state court proceeding. That's not why
17 we're here today. They are seeking to go above and beyond
18 that. They are seeking to expand the scope of their
19 representation outside of what the Bankruptcy Code has.

20 THE COURT: Well, what -- if I deny the motion, how
21 would you describe what they can't do?

22 MS. LIOU: What they can't do is they can't ghost
23 write pleadings. They can't pass through costs of expert
24 witnesses --

25 THE COURT: Right.

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1 MS. LIOU: -- preparing expert witnesses, creating
2 lines of questioning for those expert witnesses on to the
3 estate. They can't participate in the litigation discovery.
4 They can go ahead --

5 THE COURT: Well --

6 MS. LIOU: -- monitor what is happening.

7 THE COURT: -- another subject. Participate but --
8 participate in the discovery but sit in and observe the
9 discovery?

10 MS. LIOU: I believe that that is fine. That is
11 absolutely fine.

12 THE COURT: Okay. Okay. Well, go ahead.

13 MS. LIOU: Yes.

14 THE COURT: So am I right that this is all about how
15 much it costs, or am I -- or is it more than that? In other
16 words, this isn't just a question of the debtor having to pay
17 for additional work by TCC. It's -- you want me to prohibit
18 them from doing things like ghost write. I don't know how I
19 enforce that, but --

20 MS. LIOU: Absolutely. No, you're absolutely correct,
21 Your Honor. This is not just about the cost. I mean, I think
22 we feel very strongly that the Code and precedent does not
23 provide for this expansion of a committee's duties. I mean,
24 this is completely novel and unprecedented relief, and the
25 committee -- the TCC itself has not been able to point to any

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1 situation where this has been allowed. In addition to that, we
2 do think that there are potential serious conflicts that are
3 posed, and I know the TCC has indicated in its papers that they
4 don't believe a conflict exists. But there are two reasons why
5 I believe there is not just a potential for conflict, but an
6 actual conflict that could exist.

7 In their plan, they've got a 14.5-billion-dollar cap
8 on the recovery that goes to all these plaintiffs. Depending
9 on the outcome of the Tubbs trial, more or less may be
10 available for other members of its constituent. I think it
11 goes outside the role of a committee properly to go ahead and
12 aid individual claimants in the maximization of their claims
13 against the estate, which may then prejudice other members of
14 their constituency.

15 THE COURT: Okay. Well -- but that's not quite the
16 same as representing an individual member or an -- excuse me,
17 an individual plaintiff. They're not asking to do that.

18 MS. LIOU: Well, I think you hit the nail on the head
19 when you said they're essentially acting as co-counsel to the
20 existing qualified, very able counsel for the plaintiffs in the
21 state court litigation.

22 THE COURT: All right. Okay. Anything further?

23 MS. LIOU: No, Your Honor. That's it from us. We
24 rest on our -- the rest of the arguments in our papers.

25 THE COURT: Ms. Morris, you asked for -- to reserve

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1 some time. You want -- you said -- are you going to submit, or
2 do you want to --

3 MS. MORRIS: We're happy to submit it with the
4 arguments so far.

5 THE COURT: Okay. I'm going to just give it a little
6 bit of thought. I don't intend to do anything other than issue
7 the briefest of orders that won't be expansive in terms of what
8 I do. But I just want to reflect on what I heard both counsel
9 said today -- or all three counsel, rather. And so I'll have a
10 ruling on it very promptly. So I'll treat that as submitted.
11 Thank you for your time.

12 Okay. Mr. Karotkin.

13 MR. KAROTKIN: Thank you, sir. Again, Steven
14 Karotkin, Weil Gotshal & Manges, for the debtors.

15 I believe, Your Honor, pursuant to your order, you
16 wanted to consider the briefing schedule next with respect
17 to --

18 THE COURT: Yeah.

19 MR. KAROTKIN: -- the make-whole.

20 THE COURT: I mean, when I -- I did that, and I sent
21 that out before I was able to read all the stuff that came in
22 in the last thirty-six hours. I wasn't even here for most of
23 Monday, so when I had the late filing from you and from the
24 subrogation committee, there was a lot of stuff in there,
25 including the correspondence: one from you and one from Baker

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1 Hostetler on the subject of briefing.

2 Your letter was the earlier letter of October 16th,
3 but I don't believe -- or maybe that was one that I got earlier
4 when I was traveling. Anyway, my point is that, maybe, to some
5 extent, talking about plan scheduling and briefing schedule
6 overlaps. So for lack of any way to do it, why don't we just
7 take it in parts?

8 So let's start again with inverse condemnation, which
9 isn't in your letter of October 16th. We had previously talked
10 about that, but now Mr. Julian's letter of yesterday raises the
11 issue of something that's been discussed with Judge Donato.
12 And I did look at the transcript of Judge Donato's ruling -- or
13 his hearing yesterday.

14 So what is it that you propose, Mr. Karotkin? You --
15 MR. KAROTKIN: I propose that Mr. Orsini address that
16 issue.

17 THE COURT: Oh, okay.

18 MR. ORSINI: Good morning, Your Honor. Kevin Orsini,
19 Cravath, Swaine & Moore, for the debtors.

20 THE COURT: So I -- just to review, the original date
21 from prior hearings was opening brief, October 25th, then on
22 November 15th, November 22nd, and December 11th. But Mr.
23 Julian wants to go earlier. What do you want to do?

24 MR. ORSINI: And so Your Honor, as you'll recall, we
25 had tried to tee up the inverse issue a lot earlier in the

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1 whole process.

2 THE COURT: Right.

3 MR. ORSINI: We are where we are now. We're certainly
4 amenable, subject to Your Honor's preferences, to moving up the
5 hearing date. We'd also be amenable -- again, you're the judge
6 who's going to make the decision, so if you think replies are
7 unnecessary, we're not going to stand up here and insist on a
8 reply. The one thing I do think is important, Your Honor, and
9 the one area where I think we disagree with Mr. Julian is, we
10 would like a hearing. We would like an opportunity to discuss
11 the issues with the Court.

12 THE COURT: Well, at the -- my prior hearing was
13 before all of you were headed up to see Judge Donato, and now
14 you've seen him twice since you were last here. And I have
15 twice read the transcripts that -- the presentations before
16 him. And I still don't know what the answer to the Cantu
17 question is.

18 So is Cantu off the table for me, for sure, or not for
19 sure?

20 MR. ORSINI: Well, Your Honor, I'm not sure I know the
21 answer to that question, either. I --

22 THE COURT: Well, I remember asking someone, please
23 find out from Judge Donato.

24 MR. ORSINI: Right. And what I do know is Judge
25 Donato has made clear is that he will not consider summary

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1 judgment motions from us on the Cantu issue. That much has
2 been very clear on the transcript. We think it's a very
3 important material issue to some of these fires, and so we will
4 either address it in the context of the final estimation
5 hearing, or we're happy to address that with Your Honor
6 separately.

7 I think Judge Donato's view is that is likely an issue
8 that if it's existing and if it's being decided as before him,
9 but I don't know what else to add --

10 THE COURT: Well, help me --

11 MR. ORSINI: -- on that point, Your Honor.

12 THE COURT: -- help me understand better, where does
13 Cantu fit in the hierarchy of the inverse condemnation thing?

14 MR. ORSINI: Sure.

15 THE COURT: I mean, I've heard it several times, and
16 I'm thinking in terms of, is this efficient to break this into
17 parts?

18 MR. ORSINI: So the way I look at is, there's -- what
19 we had previously discussed with Your Honor and what we're
20 prepared to file on Friday, is what I call our threshold
21 inverse challenge, which is the question of, does inverse
22 condemnation apply to an investor and utility like PG&E?

23 THE COURT: And the Butte trial court said, no,
24 right -- I mean, says it does apply?

25 MR. ORSINI: The Butte trial court said it does

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1 apply --

2 THE COURT: Right.

3 MR. ORSINI: -- as did the North Bay trial court on a
4 demur.

5 THE COURT: Right.

6 MR. ORSINI: But we believe those were both
7 incorrectly decided and don't reflect the California Supreme
8 Court precedent.

9 THE COURT: No, I understand --

10 MR. ORSINI: As to the merits.

11 THE COURT: -- it might on the merits.

12 MR. ORSINI: But -- so if we win on that, if we were
13 to convince Your Honor that that is true, that inverse just
14 doesn't apply to PG&E, we never get to Cantu.

15 THE COURT: And Cantu's dead now, right?

16 MR. ORSINI: Cantu's dead.

17 THE COURT: Cantu's off the table?

18 MR. ORSINI: Correct. If we don't prevail and Your
19 Honor concludes that inverse does apply as a constitutional
20 doctrinal matter to PG&E, then the Cantu issue becomes ripe
21 with respect to a subset of the fires, because the argument
22 under Cantu doctrine is --

23 THE COURT: Yeah.

24 MR. ORSINI: -- that, based on the facts of how a
25 particular line was constructed --

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1 THE COURT: Yeah, I --

2 MR. ORSINI: -- to serve --

3 THE COURT: -- do understand that that's a fact, and I
4 think you were somewhat bullish about thinking it's still not
5 materially facts in dispute. But I think your opponents don't
6 agree with you.

7 MR. ORSINI: I think that's right.

8 THE COURT: So --

9 MR. ORSINI: I'm still bullish that there are not
10 facts in dispute, and I'm sure they're equally bullish that
11 there are.

12 THE COURT: Well, it seems to me that it makes no
13 sense for me even to go near the Cantu case unless it goes out
14 with the -- I toss it with the bath and the baby by buying your
15 argument on the basic principle, which I have to keep an open
16 mind and read the briefs.

17 MR. ORSINI: I think where we are right now, Your
18 Honor, that probably makes the most sense.

19 THE COURT: Okay.

20 MR. ORSINI: We focused our briefing that we're
21 starting on Friday on the threshold issue. And in terms of the
22 schedules, as I said, happy to forgo reply. It's up to Your
23 Honor whether you think a reply will be useful. I won't take
24 it personal if you say it won't be, but we would like an
25 opportunity to come and have a hearing to discuss the issue

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1 with Your Honor.

2 THE COURT: Well -- okay. So I was looking at my own
3 schedule. We've got a lot of stuff coming up, and we're going
4 to talk more about some other schedules in a minute. Mr.
5 Julian, who's here, and we can speak for himself, but I mean,
6 he's suggesting submitting the matter after November 15th. I
7 mean, I guess, basically, if we go back -- if I take Mr.
8 Julian's letter and take your comments, Mr. Orsini, I can stick
9 with what we have and say, opening brief, but it's opening
10 brief from you, from the debtors, or anybody that aligns with
11 you. Right?

12 MR. ORSINI: Correct, Your Honor.

13 THE COURT: And then reply -- or opposition -- Mr.
14 Julian's letter says the 15th -- and he would have it submitted
15 then. And you would have it argued. And yeah, I mean, I'll
16 pass up the invitation to skip the reply briefs. And so I
17 think what I would do is -- I believe we have -- one second.

18 Well, it's a tight schedule, but we are -- we still
19 have blocked out a PG&E day on November 19th. So what if we
20 sit with 10/25, 11/15, and argument on 11/19?

21 MR. ORSINI: That would be great from our perspective,
22 Your Honor.

23 THE COURT: Mr. Julian, is that acceptable?

24 MR. JULIAN: That's fine, Your Honor.

25 THE COURT: So is there anyone in the court that's

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1 going to be filing briefs with the TCC, or, Mr. Julian, you
2 must be getting -- whether I grant or deny their earlier
3 motion, I presume you're going to hear from some of your state
4 court colleagues on the arguments. But whether one of you or
5 more than one of you sign the brief is not important to me. Is
6 there any reason why there'd be any problem with just a page
7 brief and limit on one brief from both sides, and we're done?

8 MR. JULIAN: You've asked us to coordinate; we are
9 coordinating.

10 THE COURT: Well -- okay. So --

11 MR. JULIAN: We hope the subro claimants are a part of
12 this.

13 THE COURT: Okay. Let's do this. Mr. Orsini, at the
14 risk of asking the question I don't want to ask you to answer,
15 how much -- are you going to stick with the twenty-five pages,
16 or are you going to ask for an oversized brief?

17 MR. ORSINI: So Your Honor, our brief is currently
18 under twenty-five pages. I would expect to land there. I do
19 believe that the equity group represented by Mr. Bennett, as
20 well as potentially the unsecured creditors' committee, had
21 views that they would submit short joinders. We can -- I don't
22 know the length of the briefs they are --

23 THE COURT: Okay.

24 MR. ORSINI: -- proposing.

25 THE COURT: I'll simplify it. Here's what I'll do. I

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1 will take from the debtor and anybody that aligns with the
2 debtor -- whether that's OCC, shareholders, or otherwise -- to
3 have one brief, jointly argued and -- I see that many of you,
4 in the prior submission to Judge Donato, did quite ably of
5 joining -- filing a statement that nobody was aggrieving with,
6 but everybody had his own segment.

7 MR. ORSINI: We hope -- we got it in one document,
8 Your Honor. That was the accomplishment.

9 THE COURT: I guess if I get everybody in one brief on
10 one side of inverse condemnation, they better take the same
11 view. But I'll tell you what. I'll go with 10/25, thirty-
12 five-page max joinders and within the thirty-five. Same for
13 Mr. Julian and the TCC on the other side. November 15th,
14 thirty-five pages.

15 Mr. Julian, you can line up all your colleagues that
16 want to join you on the argument. And so I will get up to
17 seventy pages, and I will say no reply brief. And we will have
18 an argument at 10 o'clock on -- what did I say -- December --

19 MR. ORSINI: No, it was November 19th.

20 THE COURT: -- I mean November 19th.

21 MR. ORSINI: I believe so.

22 THE COURT: Okay. Does that work for everybody?

23 Anyone want to speak against that bef -- because it's
24 a done deal as far as I'm concerned. And Cantu is not going to
25 be discussed.

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1 Okay.

2 MR. ORSINI: Thank you, Your Honor.

3 THE COURT: Now, you're going to go back to your
4 colleague there for the other schedules?

5 MR. ORSINI: I am absolutely going to now propose that
6 Mr. Karotkin come back up.

7 THE COURT: So Mr. Karotkin, your letter -- or
8 rather -- I'm sorry, the filing that you made yesterday
9 afternoon includes post-petition interest. So the first
10 question I have on that is, is this a -- your letter divides
11 sort of the briefing into two categories: post-petition
12 interest and make-whole premium.

13 MR. KAROTKIN: That was done, Your Honor, at the
14 request of counsel for the other side.

15 THE COURT: No, and that's fine with me. I think I
16 had even -- my question to you is, is there something else? Is
17 there another brief or brief of topic that is the question if
18 impaired or not impaired? In other words, I'm --

19 MR. KAROTKIN: I think those are the two issues that
20 go -- the post-petition interest and the make-whole premium go
21 to the issue of impairment.

22 THE COURT: Well -- but for example, in the briefing
23 for the motion that's on today, the -- what we'll call the 9019
24 motion or the RSA motion -- there is an argument that I think
25 you've argue -- you're arguing that, of course, the subrogation

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1 group is impaired. And I believe some of the opposition may be
2 getting my -- the opposition's blended in my head. But they're
3 saying, no, it's unimpaired. So that's maybe an easy question
4 to answer. But the question is, isn't that something that
5 should be addressed as a gating issue?

6 MR. KAROTKIN: We're happy to do that as well. What
7 we were trying to address, Your Honor, was what had come up
8 earlier --

9 THE COURT: Yeah.

10 MR. KAROTKIN: -- in September, when you -- you had
11 raised the issues of the post-petition interest and the make-
12 whole and requested -- it was your view, and we agreed, that
13 those were gating issues that should be addressed early in the
14 process. We're happy to address --

15 THE COURT: No, we're on the same page here.

16 MR. KAROTKIN: Yeah, and we're happy to have another
17 brief, if necessary, to address --

18 THE COURT: Well --

19 MR. KAROTKIN: -- the issue with respect to the
20 subrogation claimants.

21 THE COURT: Let me say this: that later -- and
22 perhaps the next item on the agenda is to discuss different
23 views about a timeline for confirmation and consideration of
24 plans. It strikes me -- and this goes back to one of the very
25 early hearings that I had when I said let's be creative and

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1 figure out a way to be more efficient. I would like to break
2 the confirmation issues into discrete things, like these, that
3 they are confirmation issues. And I can sure understand --
4 everybody's going to tell me the obvious. We can't get to an
5 estimation number until Tubbs and Donato are done. Of course,
6 that's true.

7 But -- and of course, we can't know some of the
8 ultimate confirmation issues until we know feasibility and
9 financing, et cetera. But there are some other issues that are
10 discrete. And it would seem to me that we don't have to get to
11 disclosure discussions if we can isolate and pin down with the
12 competing parties' confirmation issues. And --

13 MR. KAROTKIN: And the --

14 THE COURT: -- there's no rule that says you can't
15 start the confirmation process before you get to the
16 estimation.

17 MR. KAROTKIN: Well -- exactly. And that was your
18 idea, Your Honor, and we agreed. And --

19 THE COURT: Right.

20 MR. KAROTKIN: -- what we did --

21 THE COURT: So why don't we --

22 MR. KAROTKIN: -- is we engaged with the other parties
23 at your direction to agree on a briefing schedule for these
24 issues. In -- as I indicated in my letter of, I believe,
25 October 16th, we had largely agreed on the schedule.

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1 THE COURT: Yeah.

2 MR. KAROTKIN: You then terminated exclusivity, and
3 all of a sudden, things changed.

4 THE COURT: No, I understand that things changed.

5 MR. KAROTKIN: I don't think there's any reason to
6 change the fact that these issues should be addressed now. We
7 proposed a schedule, at least for these two items, pretty much,
8 Your Honor, consistent with what had been largely agreed upon
9 earlier.

10 THE COURT: No, I know. I understand this is --

11 MR. KAROTKIN: The only change --

12 THE COURT: -- the (indiscernible) are in.

13 MR. KAROTKIN: -- being, of course --

14 THE COURT: Yeah.

15 MR. KAROTKIN: -- like, we've now wasted two more
16 weeks --

17 THE COURT: Well --

18 MR. KAROTKIN: -- and we pushed it out. So what we
19 have proposed is a briefing schedule that, frankly, is, as I
20 said, largely consistent with what had been agreed to before
21 they changed their minds and viewed the process to proceed
22 differently.

23 THE COURT: Well, they're allowed to change their
24 mind. It's a --

25 MR. KAROTKIN: Your Honor, we've become very

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1 accustomed to that.

2 THE COURT: So --

3 MR. KAROTKIN: But --

4 THE COURT: But here -- But Mr. --

5 MR. KAROTKIN: -- what I'm saying is --

6 THE COURT: But Mr. Karotkin, I want to pin you down.
7 I hear -- you keep telling me how brilliant I was by thinking
8 of these specific issues.

9 MR. KAROTKIN: Yes, absolutely, Your Honor.

10 THE COURT: But I want to show -- I want you to help
11 me -- you be equally brilliant. Are there some other issues?
12 Now, for example, I still don't know where we are on the
13 question of whether I -- there can be an estimation of the
14 government claims that are filed as claims.

15 MR. KAROTKIN: And Mr. Zumbro has agreed on a schedule
16 for that with the other parties.

17 THE COURT: A briefing schedule?

18 MR. KAROTKIN: Yes, sir.

19 THE COURT: Okay. Fine. That's great. So -- and I'm
20 glad to hear that. But that was my point. When I'm looking at
21 your filing of yesterday, I'm going, well, wait a minute, we're
22 missing something. Where is --

23 MR. KAROTKIN: Yes.

24 THE COURT: -- impaired --

25 MR. KAROTKIN: No.

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1 THE COURT: -- and unimpaired? And then --

2 MR. KAROTKIN: Mr. Zumbro will tell the Court shortly
3 exactly what --

4 THE COURT: Okay.

5 MR. KAROTKIN: -- what has been agreed upon. And what
6 we're suggesting, Your Honor -- again, consistent with what
7 you've -- your views --

8 THE COURT: My brilliance.

9 MR. KAROTKIN: -- this -- your brilliance.

10 THE COURT: Not your brilliance. All right.

11 MR. KAROTKIN: Yes. I'll use your words. Your
12 brilliance. I certainly agree with that.

13 THE COURT: Right. That's right.

14 MR. KAROTKIN: Is that this is a reasonable briefing
15 schedule for these issues, plenty of time. We agreed to split
16 it up into two distinct briefs, at their request, to give more
17 time on the make-whole premium, which they think is more
18 complicated. We were prepared to move more quickly on that;
19 they didn't want to. And if Your Honor wishes, we can agree on
20 a different briefing schedule with respect to whether or not
21 the subrogation claimants are impaired under our plan.

22 THE COURT: I prefer letting you and the principal
23 lawyers agree, and you've made progress. I'm --

24 MR. KAROTKIN: Well, no --

25 THE COURT: I'm on board.

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1 MR. KAROTKIN: -- the problem is, Your Honor, we
2 didn't make progress.

3 THE COURT: Well --

4 MR. KAROTKIN: The problem is, Your Honor, is we
5 thought we had made progress. And then -- again, as we
6 predicted, when you terminated exclusivity, people backed off.
7 People polarized, and they backed off from where they were.

8 THE COURT: Well --

9 MR. KAROTKIN: We think this is a reasonable schedule,
10 and we would ask you to approve it so we can move this forward.
11 These are discrete issues. There is no reason -- nothing has
12 changed by reason of your decision to terminate exclusivity to
13 say these issues should not be addressed now.

14 THE COURT: Okay.

15 MR. KAROTKIN: Nothing has changed.

16 THE COURT: So -- but if we were trying to do a
17 checklist of what hoops does anybody have to jump through to
18 get a plan confirmed, well, first of all, you got to get the
19 votes, and you got to decide whether there's impaired classes
20 and how they vote. And then you got to decide whether your
21 plan is feasible. So those are all things that are down the
22 road a bit. But I'm just trying to make sure we put all of our
23 collective heads together to try to identify any other critical
24 issues that can be dealt with earlier.

25 So whether we call it two briefs or three briefs or

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1 four briefs isn't the point. It's post-petition interest,
2 make-whole, impair or not impair, 502(c), maybe a cram-down if
3 there's another variation on some absolute priority issues. I
4 just want the best brains together -- put together to figure
5 out how to tee it up so I can do my job.

6 MR. KAROTKIN: Okay.

7 THE COURT: That's all.

8 MR. KAROTKIN: May I --

9 THE COURT: And --

10 MR. KAROTKIN: -- make a suggestion --

11 THE COURT: Yes.

12 MR. KAROTKIN: -- on that? Okay.

13 THE COURT: By all means.

14 MR. KAROTKIN: I think, for purposes of today, the
15 only issues I'm aware of are the three you mentioned, which are
16 the two -- post-petition interest, make-whole premium, and
17 whether or not, under our plan -- excuse me -- the subrogation
18 claimants are impaired or not impaired.

19 THE COURT: Okay.

20 MR. KAROTKIN: Okay?

21 THE COURT: Um-hum.

22 MR. KAROTKIN: I'm reluctant, Your Honor, to leave the
23 courtroom today without having a schedule in the post-petition
24 interest issue and the make-whole premium set.

25 THE COURT: You will. We will have -- we will have

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1 the schedule this moment.

2 MR. KAROTKIN: Okay. And I'm more than happy to try,
3 as we tried before, to work with the TCC and the ad hoc
4 bondholders to agree on the schedule for the issue of
5 impairment. And we can do that during a break today and
6 perhaps agree on that, or we can report to you in the next
7 couple of days.

8 But Your Honor, after what we've been through for the
9 last two weeks or three weeks to try to agree on a schedule, I
10 am absolutely reluctant to leave the courtroom today without a
11 schedule on those two issues.

12 THE COURT: I'm -- you're going to have a schedule as
13 soon as I hear from the other side.

14 MR. KAROTKIN: Okay.

15 THE COURT: So let's stick -- oh, well, help me -- one
16 more thing, because I'm not -- there are a lot of people
17 following this case, and I want to make sure we're not missing
18 something. The phrase "make-whole premium" is a -- "make-
19 whole" is a term that shows up in a couple of different places.
20 So what we're talking about here is the issue of -- part of the
21 impairment/not impairment, right?

22 MR. KAROTKIN: Correct.

23 THE COURT: For the bond. It's not --

24 MR. KAROTKIN: This has nothing to do --

25 THE COURT: It's not -- nothing to do with the

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1 subrogation claim --

2 MR. KAROTKIN: It has nothing to do --

3 THE COURT: -- and the insurance issue.

4 MR. KAROTKIN: -- with the insured -- the insured
5 issue, insured versus not --

6 THE COURT: Right.

7 MR. KAROTKIN: -- insured issue. Insured versus --

8 THE COURT: Right. I know, but it's just --

9 MR. KAROTKIN: Correct.

10 THE COURT: -- the phrase.

11 MR. KAROTKIN: That's "made-whole".

12 THE COURT: Made-whole, make-whole. Okay.

13 MR. KAROTKIN: That's how we can distinguish those.

14 This is the --

15 THE COURT: Okay.

16 MR. KAROTKIN: -- make-whole premium in connection
17 with the refinancing of the bonds.

18 THE COURT: So what I think I would do, Mr. Karotkin,
19 so as -- and to the extent that you complain about what you've
20 been through, I'm sure the other side will complain, and I
21 don't want to get there. I want to have a schedule, too. So
22 I'm willing, for these purposes, to just use the topics that
23 you and I have been talking about, and then every other counsel
24 that wants to be heard and say that we're crazy and there's a
25 different way to do it, I'll listen to them.

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1 But for post-petition interest, the opening brief
2 then -- it's your side. It's debtors' opening brief, because
3 your plan argues that you can -- you don't have to pay
4 contract. You can pay judgment rate -- federal judgment
5 rate --

6 MR. KAROTKIN: Correct.

7 THE COURT: -- right? So the question is then, then
8 who is going to be on your side? Is it going to be the same
9 alignment: the shareholder group, the OCC -- or maybe not the
10 OCC --

11 MR. KAROTKIN: Not the OCC.

12 THE COURT: -- I don't know. But I -- and I don't
13 care the answer. I'm -- I think what I would like to do today
14 is -- well, excuse me. We talked about simultaneous based on
15 this issue, right? So --

16 MR. KAROTKIN: Well, we -- there's a proposed
17 schedule. I don't know if you're looking there, but --

18 THE COURT: Yeah, I'm looking at it. This --

19 MR. KAROTKIN: Yeah.

20 THE COURT: -- is the one that was on your --

21 MR. KAROTKIN: We're talking about --

22 THE COURT: -- filing yesterday.

23 MR. KAROTKIN: -- simultaneous briefs.

24 THE COURT: Yeah.

25 MR. KAROTKIN: That's what -- actually, that's what

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1 they requested, again.

2 THE COURT: Well -- okay,

3 MR. KAROTKIN: Which is fine with us. We agree to
4 that. That's fine.

5 THE COURT: So let's try it this way then. On
6 November 8th, the debtor, on the one side, and TCC, presumably,
7 on the senior bondholders, primarily, and anybody lining up
8 with either of those two -- so I don't -- we don't have to have
9 a show of hands -- would file simultaneous briefs on November
10 8th and simultaneous reply briefs on November 22nd. And I
11 would have oral argument.

12 Now, your proposal says the 16th. I don't --

13 MR. KAROTKIN: And the reason being, Your Honor -- I
14 can explain that --

15 THE COURT: Okay.

16 MR. KAROTKIN: -- is -- I think, originally, the
17 parties had discussed December 11th, and then I think the --
18 you had originally, or people were originally thinking about
19 having the inverse condemnation argument on December 11th. So
20 before that had been changed today, just a few minutes ago, we
21 had suggested December 16th. December 11th is fine with us.

22 THE COURT: Yeah, I think the 16th is just one of
23 those days that doesn't work.

24 Isn't that right, Mr. Caplus (phonetic)? That's not a
25 day we've got reserved for PG&E? We've got the -- we have the

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1 11th, but we don't have another -- right?

2 THE BAILIFF: Correct. It's not a reserved date.

3 THE COURT: Yeah. I mean, I can do it if we need to.
4 I don't --

5 MR. KAROTKIN: The 11th is fine. And originally,
6 that's what we talked about.

7 THE COURT: Okay. Let -- I will hear from everybody
8 else. But for now, I want to stick with you, Mr. Karotkin.
9 And so the proposal would be simultaneous briefs on the 8th;
10 simultaneous replies on the 22nd; oral argument on December
11 11th.

12 MR. KAROTKIN: And again, Your Honor, it's my
13 understanding what you mean is, as you stated, with inverse,
14 there would be brief together on one side and one brief --

15 THE COURT: Thirty-five pages.

16 MR. KAROTKIN: -- together on the other side.

17 THE COURT: Thirty-five.

18 MR. KAROTKIN: Yeah.

19 THE COURT: That would be the proposal. Okay.

20 Then for make-whole premium, your proposal is November
21 21, December 13th, and January 6th. I didn't clear that date.

22 Is that a PG&E date?

23 THE BAILIFF: I'm sorry, which date?

24 THE COURT: I mean, we can make it a date, but we have
25 a number of dates set aside.

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1 THE BAILIFF: What date?

2 MR. KAROTKIN: January 6th.

3 THE COURT: January 6th?

4 THE BAILIFF: It is not right now.

5 THE COURT: But what's our first January date for
6 PG&E?

7 THE BAILIFF: 14.

8 THE COURT: Well, is the 6th available?

9 THE BAILIFF: Yes.

10 THE COURT: Okay. Well, let's tentatively say that.

11 And so Mr. Karotkin, I don't -- I'm not afraid of
12 having two issues briefed and argued if you want to move the --
13 well, you said Mr. Zumbro's got some dates for the 502(c)
14 issue. So you want to match up the same schedule on the
15 impair/not impair as with the make-whole schedule?

16 MR. KAROTKIN: That's fine with us. Okay.

17 THE COURT: Okay. Again, so I'm going to hear from
18 others. But you want to talk to him?

19 (Counsel confer.)

20 MR. KAROTKIN: Okay. We're fine with doing the
21 impairment with respect to the subrogation claimants on the
22 same schedule -- I believe you said it's the make-whole?

23 THE COURT: Yeah. I mean, there -- I mean, I would do
24 it even on the earlier one, but I think I have enough going on
25 with the -- a lot of -- you guys have a lot of brief writers.

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1 We only have one brief reader.

2 MR. KAROTKIN: Right. We're happy to do it on the
3 make-whole schedule.

4 THE COURT: Okay.

5 MR. KAROTKIN: I believe that makes sense.

6 THE COURT: All right. So again, I'll let Ms. Diemer
7 or anyone else that wants to be heard -- I'm not trying to cut
8 anybody off. I'm tentatively sticking with that schedule, and
9 we'll ask Mr. Zumbro to confirm his schedule. And so that'll
10 be four briefing schedules -- let me finish. Let me get from
11 Mr. Zumbro to get the last one --

12 MR. STAMER: Yeah, sure, sure, sure.

13 THE COURT: -- from the debtors' proposal, and then
14 I'll hear from you, Mr. Stamer.

15 Okay. Mr. Zumbro.

16 MR. ZUMBRO: Thank you. Good morning, Your Honor.

17 THE COURT: Thank you.

18 MR. ZUMBRO: Paul Zumbro, from Cravath, Swaine &
19 Moore, on behalf of the debtors.

20 I'll start by saying I don't want thirty-five pages,
21 so if you could stick me to twenty-five pages, that would be
22 fine on ours. We didn't specifically discuss --

23 THE COURT: In that case, fifteen.

24 MR. ZUMBRO: Yeah. Okay. That's fine, too.

25 But we've agreed with this -- the cutoff that we've

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1 agreed with the U.S. government and the California state
2 agencies and the TCC for the briefing schedule on the 502(c)
3 estimation issue is, that -- now that we've got -- the bar date
4 has passed, and we've got the relevant claims --

5 THE COURT: Well, the bar date is -- we don't know
6 what --

7 MR. ZUMBRO: Well, the bar date --

8 THE COURT: -- the bar date's going to be.

9 MR. ZUMBRO: Let's just say, October 21st has
10 passed --

11 THE COURT: Right.

12 MR. ZUMBRO: -- and we've got the federal and state
13 agencies claims filed. We're going to identify the claims that
14 we believe are subject to estimation and that the creditors are
15 commence the briefing. So the schedule's, subject to the
16 Court's calendar, that we've agreed would be -- that we would
17 designate which were the creditors' claims we contend are
18 unliquidated and subject to estimation are November 1st. The
19 creditors would file their brief on November 15th. The
20 debtors' objection would be December 5th. The creditors' reply
21 would be December 12th, and then the hearing would be at the
22 December 17th omnibus hearing, which I think fits with the
23 other dates we discussed this morning.

24 THE COURT: Are we still showing the 17th, Mr. --

25 MR. ZUMBRO: Yes.

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1 THE COURT: And that's still -- oh, it is? Okay.

2 Let me pause for a minute.

3 Mr. Julian, I'm going to ask you a question out of
4 order here. Your motion to extend the bar date, that, I
5 presume, is for fire claims only? It's not all claims, right?
6 I haven't studied your papers.

7 MR. JULIAN: Correct, Your Honor.

8 THE COURT: So -- well, I guess I need -- okay. Thank
9 you.

10 I mean, I realize -- I haven't even read the briefs,
11 so I know how important that is. But I -- what I don't know is
12 whether that impacts the government claims and whether they
13 would take the position that there's an extension there. I --
14 I'm trying to juggle these issues, so --

15 MR. ZUMBRO: Mr. Troy's, I believe, in the courtroom
16 here, I don't know whether you have a view on that. Our view
17 is that it shouldn't affect the government plans, but --

18 THE COURT: Well, I assumed, too, reading what was
19 said to Judge Donato yesterday and reading enough -- a little
20 bit about what the TCC filed, that we know who the
21 beneficiaries are of the efforts to try to change the results.
22 And it doesn't seem that governmental agencies or insurance
23 companies or banks need to be helped on how to file claims.

24 MR. ZUMBRO: Correct. And we believe, Your Honor --

25 THE COURT: So I would not be inclined to have a new

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1 bar date for any of those people, no matter, but I just wanted
2 to make sure. I don't want to set a briefing schedule only to
3 be backed into, well, there's more time to file the claim.

4 MR. ZUMBRO: No. We understand. We think that the
5 noticing program has been robust for all claimants, including
6 the individual claimants, but we particularly don't think that
7 there's any doubt that the governmental agencies have had
8 proper notice and have in fact participated in the process
9 throughout this proceeding. So I don't think there's any
10 issue, but Mr. Troy can correct me if I'm wrong.

11 THE COURT: Okay.

12 MS. WINTHROP: Good morning, Your Honor. Rebecca
13 Winthrop of Norton Rose Fulbright, on behalf of the Adventist
14 claimants. The briefing schedule Mr. Zumbro just laid out for
15 the Court is also to apply to Adventist Health claims.

16 THE COURT: Not as a government agency but as a person
17 who's got a claim --

18 MS. WINTHROP: As a property-damage claim, if you
19 want --

20 THE COURT: And that's acceptable to you too?

21 MR. ZUMBRO: Correct, on the same framework. One
22 brief on the one side of the issue, and one brief on the other
23 side of the issue, is what our understanding was. But --

24 THE COURT: So --

25 MR. ZUMBRO: -- did you say you want to put in an

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1 extra --

2 THE COURT: -- Mr. Zumbro --

3 MR. ZUMBRO: If you want to put in another brief,
4 that's fine.

5 THE COURT: Mr. Zumbro, back up, though. What do you
6 file on November 1st? If they just file a list -- right? You
7 say the following people we think should be estimated?

8 MR. ZUMBRO: Correct. Well, we were focused primarily
9 on the governmental claims but, yes, we were going to look at
10 the governmental claims, both the U.S. government and the
11 California state-agency claims. And once we've had a chance to
12 look through those, we were going to meet and confer with the
13 lawyers on the side to try to discuss those, but we were going
14 to notify them as to which ones --

15 THE COURT: Okay, so --

16 MR. ZUMBRO: -- we would --

17 THE COURT: -- let's suppose that Mr. Pascuzzi says,
18 "Wait, you can't do that. My claim is fixed in the sum of
19 three million dollars." Then he briefs that on November 15th,
20 under your proposal, and you respond to that on December 5th.
21 So the briefing of November 15 and December 5th is really the
22 briefing. The first document is not so much a briefing as a --

23 MR. ZUMBRO: That's correct.

24 THE COURT: -- as a trigger as to -- for the --

25 MR. ZUMBRO: That's correct.

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1 THE COURT: Okay. And then -- all right, so -- well,
2 let's get the -- I asked Mr. Stamer to wait till we come to the
3 other issue; now I've got everybody on this issue. So let's
4 stick with this issue. Let's stick to counsel --

5 So, Ms. Winthrop, you're okay with what you just
6 heard, then, right?

7 MR. TROY: Matthew Troy, Your Honor --

8 THE COURT: Yeah. Mr. Troy.

9 MR. TROY: -- U.S. Department of Justice, Civil
10 Division, on behalf of federal government, various federal
11 agencies.

12 Fine with the schedule. Not fine with one brief from
13 everybody on one side. The debtors are going to designate
14 discrete proofs of claim that they claim are subject to
15 estimation, presumably because in their view they are
16 unliquidated. Those claims are going to be unique to each of
17 the agencies and private entities that filed them. We will
18 need -- I can't address Adventist's claims, I can't address
19 California state-agency claims, and vice versa.

20 I would submit that -- our agreement, I thought, was
21 that we would have separate briefs for each of the people or
22 entities whose claims were designated.

23 THE COURT: Well, you can take --

24 MR. TROY: I can do all of the U.S. government's.

25 THE COURT: You can take all the federal --

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1 MR. TROY: Yes.

2 THE COURT: -- and Mr. Pascuzzi --

3 MR. TROY: I got that covered.

4 THE COURT: -- can take all the state.

5 MR. TROY: Correct.

6 THE COURT: Right?

7 MR. TROY: Right.

8 THE COURT: And Ms. Winthrop can take her client,
9 and --

10 MR. TROY: Correct.

11 THE COURT: -- maybe we got everybody.

12 MR. TROY: Right.

13 THE COURT: I don't have a problem with that.

14 MR. TROY: Okay. And taking up on your queue that I
15 think we've heard throughout these hearings, going back a
16 couple months, is our intent is not to recite back to you
17 502(c) about liquidated --

18 THE COURT: Good.

19 MR. TROY: -- disputed, or contingent.

20 THE COURT: Good.

21 MR. TROY: I think you've done that very well for us
22 already. I'm just going to focus on the claims that they
23 identify.

24 THE COURT: You won't cite all the Chapter 13 cases
25 that the Ninth Circuit has --

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1 MR. TROY: If you'd like to, I'd -- happy to --

2 THE COURT: -- told us about?

3 MR. TROY: -- so you can use it --

4 THE COURT: Okay.

5 MR. TROY: -- for the next bar course.

6 THE COURT: It'll use up your page quota.

7 MR. TROY: No, but that's not our intent.

8 So the schedule is fine. So long as we have separate
9 briefs, that's fine as well.

10 Your Honor, I also just want to mention that Mr.
11 Pascuzzi is on the line and listening in, and just wanted to
12 let him have an opportunity to say anything if he wanted to.

13 THE COURT: Mr. Pascuzzi, you --

14 MR. PASCUZZI: I --

15 THE COURT: -- bored with us? Separate brief for you?

16 MR. PASCUZZI: Good -- yes, Your Honor. Good morning.
17 Paul Pascuzzi, co-counsel with the Attorney General's office,
18 for the California state agencies.

19 I agree with what Mr. Troy said; we do need separate
20 briefs. And I hear the Court saying that's fine. And again,
21 we'll do our best to be efficient on the pages.

22 THE COURT: Well, don't reinvent the wheel, that's
23 all. Let's say Mr. Zumbro offered twenty-five pages; I'll say
24 twenty-five pages from you and from Mr. Troy.

25 And, Ms. Winthrop, I hope you don't need twenty-five

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1 pages. Do you? But are you okay with it, too, everything?

2 MS. WINTHROP: I would like an opportunity to
3 separately brief, and I'm fine with twenty-five pages.

4 THE COURT: Mr. Zumbro, I think --

5 MS. WINTHROP: Thank you, Your Honor.

6 THE COURT: -- given what we're talking about, unless
7 there's someone else here that wants to be heard on this issue,
8 this one I'd like you to draft an order, a scheduling order. I
9 mean, we've been dealing with the post-petition and the make-
10 wholes, and the impair/not impair more informally. But this
11 one's got too many moving parts, so can I ask you to circulate
12 a stipulated order that -- again, I'll repeat it: November 1
13 is the date that the debtor identifies which claims they
14 believe --

15 UNIDENTIFIED SPEAKER: Can you speak up?

16 THE COURT: -- should be estimated --

17 MR. ZUMBRO: Sorry, Your Honor; I think certain people
18 are having a hard time. If you wouldn't mind --

19 THE COURT: Oh, I'm sorry.

20 MR. ZUMBRO: -- putting the microphone --

21 THE COURT: November 1st you'll -- the debtor, through
22 you, Mr. Zumbro, will designate which claims are -- you believe
23 are estimatable (sic). And the two governmental agencies and
24 the Adventist group all will, by the 15th of November, have
25 briefs, twenty-five pages for each of the three, maximum, to

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1 respond. And you will have a reply or call it -- from the
2 debtor on the 5th, and I'll hear it on the 17th.

3 MR. ZUMBRO: That sounds fine, sir. We'll --

4 THE COURT: And --

5 MR. ZUMBRO: We'll submit that.

6 THE COURT: And everybody's committed not to reinvent
7 the wheel. And just preserve your record, but do it with a
8 footnote, one footnote. Okay?

9 MR. ZUMBRO: Now I'm confused. Judge Donato said
10 we're not allowed to use footnotes, but --

11 THE COURT: Well, he's on the nineteenth floor.

12 MR. ZUMBRO: Thank you, sir.

13 THE COURT: He's Article III.

14 All right, does anyone want to be heard on this issue?
15 I mean, is there anyone in court or on the phone -- and pardon
16 me for getting away from the microphone -- that wants to be
17 heard on the 502(c) issue?

18 Okay, we're done on that. Mr. Stamer, back --

19 MR. PASCUZZI: Your Honor? Your Honor?

20 THE COURT: Yes, sir.

21 MR. PASCUZZI: Your Honor, this is Paul Pascuzzi. I
22 think you may have just misspoke on the briefing that Mr.
23 Zumbro heard (sic). He said November 1 for the designation of
24 the claims, and then November 15 would be the creditor brief,
25 December 5 would be the debtor response, and then December 12

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1 the creditor reply, and the hearing on December 17th. I just
2 want to make sure that's the schedule we are talking about.

3 THE COURT: I think, when I repeated it --

4 MR. PASCUZZI: I think that's what he started --

5 THE COURT: -- when I repeated it, I was so intrigued
6 by Mr. Karotkin agreeing he didn't have to do reply briefs,
7 that I forgot that Mr. Zumbro wanted to -- wants --

8 MR. ZUMBRO: That's correct; December 12th. What Mr.
9 Pascuzzi --

10 THE COURT: Or, well, the creditors wanted to do it.
11 Actually, the --

12 MR. ZUMBRO: Correct.

13 THE COURT: -- the creditors. Okay.

14 MR. PASCUZZI: Yeah.

15 THE COURT: That's fine. And Mr. Zumbro will
16 memorialize that in a stipulation.

17 MR. ZUMBRO: Yes.

18 THE COURT: Thank you, Mr. Pascuzzi.

19 Okay --

20 MR. PASCUZZI: Thank you.

21 THE COURT: -- Mr. Stamer.

22 MR. STAMER: Good morning, Your Honor. For the
23 record, Mike Stamer from Akin Gump, on behalf of the ad hoc
24 committee.

25 Your Honor, I stand to rise -- "I stand to rise". I

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1 rise to address the specific issue that you raised with respect
2 to briefing as it relates to post-petition interest and make-
3 whole. I appreciate your comments with respect to trying to
4 keep these proceedings civil, and I will do my best to abide by
5 Your Honor's instructions.

6 We believe that things have changed very dramatically;
7 the landscape has changed. And whether you want me to proceed
8 now or I can wait, we believe that we have all been presented
9 with an opportunity to fast-track this company out of Chapter
10 11 to a successful conclusion that pays tort claimants in full
11 and abides by the deadline in AB 1054; possibly the only viable
12 chance to do that.

13 So, Your Honor, I realize I'm at the podium talking
14 about briefing with respect to PPI and make-whole. We had a
15 number of conversations with the company, regarding what the
16 schedule should look like. We had a very unpleasant -- we had
17 a very unpleasant meet-and-confer on Monday, which, unless Your
18 Honor wants me to, I will not go into detail.

19 THE COURT: I don't want to hear it.

20 MR. STAMER: But --

21 THE COURT: I wasn't here.

22 MR. STAMER: You weren't there for that. But, Your
23 Honor, our intentions are true. Our intentions are to minimize
24 delay and maximize the likelihood of a successful outcome here.

25 THE COURT: Mr. Stamer, I wasn't judging anybody. I'm

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1 just saying I want to -- I want to keep the labels out of the
2 briefing, like hedge funds, you know.

3 MR. STAMER: I --

4 THE COURT: It's not necessary.

5 MR. STAMER: I -- understood, Your Honor.

6 THE COURT: Okay.

7 MR. STAMER: So again, from our perspective the best
8 way to handle these issues is to handle them in connection with
9 the litigation over the TCC ad hoc committee plan, that under
10 our plan we can address post-petition interest, we can address
11 make-whole optional redemption, we can do it efficiently, we
12 can do it surgically. There is significantly less at issue
13 under our plan, with respect to those issues.

14 Your Honor, you'll recall we are reinstating the vast
15 majority of the funded bond debt, and therefore only the stuff
16 that is refinanced, and some other issues you'll hear about in
17 a few minutes from other parties, the issue -- the amounts in
18 dispute under our plan, with respect to post-petition interest,
19 is much smaller. So I --

20 THE COURT: Well, there still is an -- it's still an
21 amount; it's still --

22 MR. STAMER: It's --

23 THE COURT: -- some money.

24 MR. STAMER: I think it's thirty-eight million
25 dollars --

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1 THE COURT: Yeah.

2 MR. STAMER: -- as it relates to the bonds.

3 THE COURT: No, I read that.

4 MR. STAMER: Okay.

5 THE COURT: I read that.

6 MR. STAMER: And, Your Honor, we think the most
7 efficient way to do it and the most efficient way to get to --
8 the football metaphor -- the end zone, which is confirmation,
9 satisfaction of AB 1054, is to allow our plan to go first.

10 THE COURT: Well, that's a different issue, see.

11 MR. STAMER: It --

12 THE COURT: To me --

13 MR. STAMER: Your Honor --

14 THE COURT: Okay?

15 MR. STAMER: It is a different issue. And I don't
16 mean to creep. I know that's the next thing on the agenda.

17 THE COURT: I don't mind -- I don't mind taking it all
18 together, but what I -- well, let me make sure you're clear.
19 I'm not about to make this like consecutive sentences. I'm
20 going to do it concurrent, for the time being.

21 MR. STAMER: And there are different layers of
22 concurrence.

23 THE COURT: Right. That's true.

24 MR. STAMER: We think one of the advantages -- and
25 this is maybe a threshold issue we should talk about. One of

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1 the advantages of our plan -- which, Your Honor, you'll recall,
2 we had a back-and-forth on September 24th and you had a back-
3 and-forth with Mr. Karotkin on this issue, at the status
4 conference --

5 THE COURT: Right.

6 MR. STAMER: -- is our ability to take the burden off
7 of Judge Donato by virtue of mootng the estimation. Those
8 are --

9 THE COURT: I know, but --

10 MR. STAMER: -- the words we used.

11 THE COURT: -- there's a whole group of lawyers on
12 this side of the room that don't think the burden is gone; it's
13 still there; it's just --

14 MR. STAMER: Your Honor, and --

15 THE COURT: -- a different label.

16 MR. STAMER: It's a --

17 THE COURT: It's called valuation, right?

18 MR. STAMER: Your Honor, you're exactly right.

19 THE COURT: Right.

20 MR. STAMER: It is clearly within your court
21 jurisdiction. I don't think anyone would argue otherwise. And
22 we believe what you need to find to confirm the TCC ad hoc plan
23 is that it doesn't violate the absolute-priority rule. The
24 settlement is reasonable and it doesn't violate the absolute-
25 priority rule --

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1 THE COURT: But how about if it overpays your class?

2 MR. STAMER: Your Honor, not our class.

3 THE COURT: I mean --

4 MR. STAMER: You mean the TCCs?

5 THE COURT: Yeah, the TCCs.

6 MR. STAMER: That is the fundamental issue, as part of
7 confirmation, you would have to resolve.

8 THE COURT: Right. Right, but it's still a fact
9 question, right? In other words, you've got to -- you've got
10 to get a number called estimation, either by Judge Donato or a
11 mediated settlement, and let's assume the former, and he has a
12 schedule and he's going to plug in that number, and that
13 number's going to influence, really, some of these other issues
14 dramatically.

15 So, I mean, your plan is DOA if he puts a huge number
16 on it. And --

17 MR. STAMER: Other way around.

18 THE COURT: Well --

19 MR. STAMER: Other way around.

20 THE COURT: -- I mean a huger number.

21 MR. STAMER: No, no, Your Honor --

22 THE COURT: Yeah; I mean a --

23 MR. STAMER: -- as we talked about in connection with
24 exclusivity, our plan is DOA; we'd have to amend it if in fact
25 the number is very small.

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1 THE COURT: No, I know that.

2 MR. STAMER: So if the number is --

3 THE COURT: But what if it's very large?

4 MR. STAMER: If it's very large, we are relying upon
5 our partners, the TCC and the members of the TCC and the people
6 that they work with, to carry the class. I believe counsel for
7 the TCC, at the exclusivity hearing, said, we are confident
8 that we will carry the class, the fiduciary for the tort
9 claimants.

10 THE COURT: But --

11 MR. STAMER: So, big number.

12 THE COURT: -- Mr. Stamer, if the --

13 MR. STAMER: Sure.

14 THE COURT: -- if the ultimate determination is
15 insolvency, then we're all starting --

16 MR. STAMER: Your Honor, it's a --

17 THE COURT: -- all over again, aren't we?

18 MR. STAMER: -- it's a great question. So if in fact
19 they can't carry the class, then you're right; we start --
20 there's an insolvent -- potentially an insolvent company; we
21 have post-petition interest that's not as big -- not really an
22 issue. We can talk about that separately.

23 THE COURT: Right.

24 MR. STAMER: But the point is, Your Honor, under our
25 joint plan, if the claim number -- again, what we're giving to

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1 the nonsettling public entities and the nonsubros -- is
2 thirteen-and-a-half billion dollars, for everybody. So if the
3 finding of Your Honor in connection with confirmation, whether
4 you want to do that in advance of a mediation or Judge
5 Donato -- which we believe you can do and can do it very
6 efficiently. If the finding is 13.5, 13.6, 20, 40, 100, and
7 the settlement sticks, which we believe it will stick, then our
8 plan is confirmable.

9 So the virtue of the TCC plan, Your Honor, is we have
10 an agreement to satisfy the tort claimants in an amount that
11 they have all agreed to, including the PI -- the PE, the public
12 entities, and including the subros. We're giving them the
13 eleven --

14 THE COURT: No --

15 MR. STAMER: -- billion dollars.

16 THE COURT: No, I know you are. I know.

17 MR. STAMER: So the virtue of our plan is the only way
18 we're vulnerable to having it not confirmable is if the number
19 is significantly less than 25.5.

20 THE COURT: Okay.

21 MR. STAMER: And I will leave it to my colleagues on
22 the TCC to talk to you; they have, to some degree. I believe
23 they may have some information about the preliminary proofs-of-
24 claim numbers.

25 Your Honor, we are -- the TCC is very confident that

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1 they're going to do -- that the number's going to be far in
2 excess of twenty-five-and-a-half billion dollars. That's the
3 fundamental assumption of our settlement, that they are willing
4 to settle, all in, for 25.5, regardless of where the number --
5 where the number comes out.

6 THE COURT: Well, but more specifically it's the TCC
7 for the 14.5 --

8 MR. STAMER: It's the TCC --

9 THE COURT: -- that are --

10 MR. STAMER: -- for the 13.5.

11 THE COURT: 13 -- the 13.5.

12 MR. STAMER: You're right, but everybody else has
13 agreed, Your Honor.

14 THE COURT: No, I know. I know that.

15 MR. STAMER: And we'll get to the subrogation stuff in
16 a --

17 THE COURT: But let's --

18 MR. STAMER: Sure.

19 THE COURT: -- let's go back to timing. In other
20 words, I -- you say that your plan is easier because a portion
21 of the estimation is out, but not all of it. And it doesn't
22 seem to me that you could ever have -- you could ever be
23 finished -- it can ever be confirmed until you got that final
24 number; right?

25 MR. STAMER: Your Honor, we filed the statement --

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1 THE COURT: Yes.

2 MR. STAMER: -- and attached to the statement is a
3 picture. I actually --

4 THE COURT: No, I saw it.

5 MR. STAMER: I'm a picture guy.

6 THE COURT: I looked at it.

7 MR. STAMER: And the -- we actually plugged in here
8 what we thought the company's schedule was going to be, on a
9 side-by-side. They actually were more aggressive. So they
10 actually pulled back what we thought they were going to be, by
11 about a month. So there's -- regardless of which way we go,
12 it's -- they leave no margin for error in the schedule they've
13 proposed.

14 If you look at our schedule, Your Honor, we believe we
15 can get to confirmation in advance of the beginning of the
16 estimation trial. So we litigate core confirmation issues, we
17 litigate whatever allowance of claim entitlements, make-whole,
18 PPI, and Your Honor litigates fair-and-equitable --

19 THE COURT: But it's not -- it's --

20 MR. STAMER: -- best interest.

21 THE COURT: But it's not really litigated. It's legal
22 argument, isn't it?

23 MR. STAMER: It's not, Your Honor.

24 THE COURT: Is it a legal question? In other words,
25 we take your plan as it's presently stated --

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1 MR. STAMER: Yep.

2 THE COURT: -- the recent one, and we take the
3 debtors' plan, and we then test the various legal tests of
4 1129 --

5 MR. STAMER: Correct.

6 THE COURT: -- and the other things, and some are
7 legal, some are factual. So we --

8 MR. STAMER: Absolutely correct.

9 THE COURT: Okay. So, I mean, that's why your time
10 line seems to be distorted in the sense that there's too much
11 that you have to wait to get done -- for you to have a lot of
12 things all done. But many of the debtors' same things can move
13 earlier, too, which is what we just talked about.

14 MR. STAMER: Actually, fundamentally I agree with
15 everything Your Honor has said but one thing.

16 THE COURT: Okay.

17 MR. STAMER: And we appreciate the efforts by the
18 Court to streamline confirmation and try to pull things out and
19 resolve them earlier rather than later. We don't think that's
20 necessary as it relates to our plan, because of the speed at
21 which we can get to confirmation.

22 The biggest difference between our plans, setting
23 aside post-petition interest, make-whole, all of that stuff --
24 the biggest difference is they are required to estimate; they
25 have to. Unequivocally, they need to get Judge Donato to say

PG&E Corp., Pacific Gas & Electric Co.

1 that there is less than 6.9 billion dollars of tort claims, or
2 their financing disappears.

3 There's an 8.4 number --

4 THE COURT: Well -- but maybe it doesn't disappear.

5 Maybe --

6 MR. STAMER: I'm glad you brought that up, Your Honor.

7 I --

8 THE COURT: Okay.

9 MR. STAMER: We actually refer to that as the stroke-
10 of-the-pen argument. Okay. Stroke of the pen. Right? So the
11 debtors are of the view that, if we get a different view from
12 Judge Donato with a stroke of a pen, what we will do is we will
13 just raise more money.

14 So here's one of the fundamental problems: the world
15 doesn't work that way. That's number one. Number two, the
16 bulk of their money is coming from equity holders. Setting
17 aside the thirty-plus --

18 THE COURT: I know.

19 MR. STAMER: -- billion dollars of bridge loan --

20 THE COURT: Yes; I understand.

21 MR. STAMER: -- it comes from equity holders.

22 THE COURT: I know that.

23 MR. STAMER: And why are they putting that money up?

24 They think it's an attractive --

25 THE COURT: Well, I think I figured out --

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1 MR. STAMER: -- investment.

2 THE COURT: -- a long time ago why both sides would
3 like to get control of the company. So I got it. Okay?

4 MR. STAMER: I -- understood, but it's specifically
5 this issue: So they're putting money up, they think it's a
6 good investment, but it relies upon Judge -- Your Honor saying
7 we're entitled to very little post-petition interest and no
8 make-whole. And they rely upon squishing down the tort claims.
9 All right? If they --

10 THE COURT: Well, wait a minute, now you're sounding
11 like one of the tort-claimant lawyers. They're not squishing
12 down. They're going to go through a consensual resolution or a
13 judicial one, and they will get -- if it's the latter, the
14 judicial process will give them a number. Now, that might be
15 squishing --

16 MR. STAMER: I --

17 THE COURT: -- as a --

18 MR. STAMER: I apologize for the shorthand, Your
19 Honor.

20 THE COURT: It's okay.

21 MR. STAMER: I --

22 THE COURT: I'm not taking it personally.

23 MR. STAMER: They're a very passionate group and it
24 tends to rub off a little bit.

25 THE COURT: But, Mr. Stamer, you would have me believe

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1 that Mr. Karotkin and Mr. Bennett and all of them are going to
2 fold their tent if Judge Donato raises the number by fifty
3 cents. I mean, what if it's ten million? What if it's --
4 billion. What if it's eleven billion?

5 MR. STAMER: That's -- Your Honor --

6 THE COURT: What if it's twelve billion?

7 MR. STAMER: -- that's the gray area. But --

8 THE COURT: That's right.

9 MR. STAMER: -- again, to put things in perspective;
10 the value of the equity of PG&E on the market right now, as of
11 the close of business yesterday, was 4.3 billion dollars.

12 THE COURT: Okay.

13 MR. STAMER: Right? 4.3 billion --

14 THE COURT: I don't know, but I'll take your word for
15 it.

16 MR. STAMER: I just asked one of my clients and they
17 looked it up on the computer -- on their phone, actually.

18 So the difference between the 6.9, which is what their
19 financing relies upon, and our 13.5 is a lot bigger than that.
20 So they lose their incentive to fund this plan on an equity
21 basis, if in fact the equity value disappears. So --

22 THE COURT: Well, of course. I understand that. But
23 therefore, what? I mean -- and I'm not sure --

24 MR. STAMER: Stroke of the --

25 THE COURT: -- what you want me to do.

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1 MR. STAMER: No, no, no. I just want to make sure --
2 I wanted to address the stroke-of-the-pen argument, the fact
3 that, if things don't go well with Donato from the -- with
4 Judge Donato, from the perspective of the debtors and equity,
5 that with a stroke of the pen they're going to write another
6 check. It's not going to happen. There may be other people
7 out there that are willing to put money in, but the equity does
8 not have an incentive to write a big check at an attractive
9 value to protect their equity investment.

10 THE COURT: But that -- but again, you're stating the
11 obvious. And so let's pretend the hypothetical --

12 MR. STAMER: Sure.

13 THE COURT: -- that Judge Donato has just announced,
14 that I find the estimated claims are twelve billion dollars.
15 And so Mr. Karotkin's plan at the moment isn't doable, but with
16 a stroke of the pen he says, we can make it twelve million.
17 You might say that doesn't happen that way in the real world,
18 and I would agree with you. But that's why you schedule a
19 hearing on feasibility. Prove your feasibility and show
20 whatever legal infirmities, if any, may exist on your plan.

21 And if, you know what, as you have predicted -- or
22 maybe it was Mr. Bennett that predicted, before, for your side;
23 if the numbers get you high and somebody drops out, the
24 question, which goes back to my philosophy about changing my
25 view and allowing competing plans, is so we have somebody --

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1 still one man standing, you know?

2 MR. STAMER: Your Honor, and I'm --

3 THE COURT: Okay?

4 MR. STAMER: We're not -- just so we're clear; nothing
5 that we're saying would stop the debtors from pursuing their
6 plan. And if Judge Donato comes up somewhere between 6.9 and
7 13.5, then there'll be a scramble. Right?

8 THE COURT: Right.

9 MR. STAMER: We'll scramble to move down; they'll
10 scramble to move up. But under their plan, they've got to do
11 it in six days. Under their schedule, their side-by-side,
12 Judge Donato issues his decision without any time for post-
13 trial briefing or anything else, and then six days later --

14 THE COURT: Well, what are you looking at here for the
15 six days later?

16 MR. STAMER: It's actually the attachment to --

17 THE COURT: Yeah, I'm looking at it. The -- your
18 chart, right?

19 MR. STAMER: It's not our chart. It's actually their
20 chart. It's attached to Mr. Karotkin's latest pleading.

21 THE COURT: All right.

22 MR. STAMER: So if you look at -- it's one of the
23 schedules.

24 Does anyone have an extra copy?

25 THE COURT: Well, I had everything up here, but I

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1 don't --

2 MR. STAMER: Your Honor, may I approach? I'll give it
3 to you handy.

4 THE COURT: Yes, of course. Yeah. Sure.

5 Oh, yeah; no, I have -- I'm sorry, I just -- I had
6 it -- I had it on the next page. There it is. Okay, go ahead.

7 MR. STAMER: Okay. So --

8 THE COURT: Yeah, all right, so there it is, but --

9 MR. STAMER: So --

10 THE COURT: But I don't -- who agreed -- I didn't
11 agree to this schedule.

12 MR. STAMER: I -- Your Honor, what I'm -- look, you
13 didn't agree to the schedule. I'm just trying to -- I'm trying
14 to explain the difference of the two plans, the risk associated
15 with what the debtors' schedule -- as they have proposed, and
16 how we address the stroke-of-the-pen argument, and that is,
17 under their schedule the -- February 18th, Judge Donato starts
18 the estimation trial. Two weeks later, under their time line,
19 although Judge Donato said two to three weeks, he issues a
20 decision. So that doesn't give him any time to write a
21 decision or for post-trial briefing. And then on the 10th of
22 March, six days later, that's when we need to file amended
23 plans and disclosure statements.

24 So if -- this is quite a needle that they'd need to
25 thread. Judge Donato needs to be somewhere in between the 6.9

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1 and the 13.5 and then, with a stroke of the pen, they need to
2 find enough money to fill the gap. And, Your Honor, my only
3 point is, if this breaks down -- if this schedule breaks down,
4 we blow up. We --

5 THE COURT: Well --

6 MR. STAMER: We don't satisfy --

7 THE COURT: Wait a minute, wait a minute --

8 MR. STAMER: -- AB 1054.

9 THE COURT: -- wait a minute.

10 MR. STAMER: Sure.

11 THE COURT: If -- why don't we refine that a little
12 bit and say, if Mr. Karotkin and his client's schedule breaks
13 down, do we still have a confirmable plan from you? The answer
14 is yes.

15 MR. STAMER: Absolutely.

16 THE COURT: That's right. So what's the problem?
17 Why -- it's just a question of making sure we do it efficiently
18 by having the legal issues ahead of time, which is what we've
19 been talking about. And there will be some evidence and facts
20 that you have to put on to prove on your schedule -- and
21 that's -- where did your chart'd go? I had it here a minute
22 ago.

23 I mean, I guess what I'm missing, Mr. Stamer, is --

24 MR. STAMER: Sure.

25 THE COURT: -- your point. Your point is their plan

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1 may not make it. Okay. I agree, it may not make it. If you
2 think your plan will make it, then all you have to do is figure
3 out and convince me to make sure it can happen. But what I
4 don't want to do is have essentially a confirmation hearing for
5 your side and just put it on the backburner for three months if
6 we have to wait for the estimation, because, again, you haven't
7 told me when we're going to have a valuation to see whether
8 your plan does in fact satisfy the absolute-priority rule,
9 because it might either overpay a class to the detriment of the
10 equity class; right?

11 MR. STAMER: Your Honor, if you go back to this
12 schedule, the exhibit of our statement, which is the top and
13 bottom --

14 THE COURT: Yeah?

15 MR. STAMER: -- and this is not a clear depiction of
16 the company, because, again, they've moved everything up by
17 about a month -- our proposed start of confirmation is January
18 21st. January 21st. Estimation is supposed to start three
19 weeks later, give or take; actually, almost four weeks later.

20 So when the litigation -- the trial over 1129(a) and
21 (b) would occur -- it would start, under our schedule, January
22 21st.

23 THE COURT: So what -- okay, it's January 21st.

24 MR. STAMER: Yeah.

25 THE COURT: What are we going to do at the

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1 confirmation hearing? We can't --

2 MR. STAMER: We're going to do --

3 THE COURT: We can't count votes. Right? We can't --
4 well, again -- well, okay, so what -- you tell me.

5 MR. STAMER: Well, let's take it one at a time.

6 THE COURT: What --

7 MR. STAMER: So with respect --

8 THE COURT: What do you present?

9 MR. STAMER: With respect to voting, in connection
10 with approval of the disclosure statement, we're going to have
11 to do something with respect to how the tort claimants will
12 vote. We can -- this has happened before -- in advance of
13 identification of everybody's individual claim.

14 THE COURT: Yeah.

15 MR. STAMER: That's what we do.

16 THE COURT: I know.

17 MR. STAMER: On January 21st we would start with a
18 full presentation of the fact that our plan satisfies all of
19 the elements of 1129(a) and (b).

20 THE COURT: But what specifically -- what is the
21 evidence that you'll put on?

22 MR. STAMER: The evidence is -- we would have to put
23 on some type of a truncated case, which would be led by the
24 TCC, with --

25 THE COURT: Feasibility, right?

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1 MR. STAMER: Feasibility, absolute-priority rule --

2 THE COURT: Right.

3 MR. STAMER: -- which is -- there'd have to be some
4 type of quantification in a truncated manner --

5 THE COURT: But what if the opponents say that your
6 plan violates the absolute-priority rule by overpaying a class?
7 That's a fact question, right?

8 MR. STAMER: It -- that's exactly right.

9 THE COURT: Right, and we're going to have a trial on
10 that subject.

11 MR. STAMER: Correct.

12 THE COURT: And so don't you then -- isn't that the
13 equivalent of estimation? It's just estimating a different
14 number.

15 MR. STAMER: Our view is it is much less involved,
16 much --

17 THE COURT: Well, I agree.

18 MR. STAMER: -- much less comprehensive, because what
19 the debtors need to do to confirm their plan is estimate the
20 claims to establish a cap. They're going to do a bottoms
21 (sic)-up analysis, if estimation goes forward, which will be
22 incredibly complex and --

23 THE COURT: No, I know. I --

24 MR. STAMER: -- time-consuming and expensive.

25 THE COURT: I read the transcript of yesterday's

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1 hearing. I know it's complex.

2 MR. STAMER: As we discussed on September 24th, we
3 believe that this can be done by the bankruptcy court, as part
4 of the bankruptcy court's core jurisdiction. It is a -- it is
5 both a fact component and an expert component. And, Your
6 Honor, the good news is there's a tremendous amount of work
7 being done in connection with estimation, that all the parties
8 can benefit from. There's discovery. There's identification
9 of expert witnesses. We don't need as comprehensive a trial as
10 Judge Donato is going to require on this issue, because it's a
11 much narrower issue. But --

12 THE COURT: No, I agree, but it --

13 MR. STAMER: But the prize, as Your Honor knows -- and
14 again, I apologize if I'm getting a little worked up. The
15 prize is to give this company and its creditors a viable shot
16 of emerging or confirming -- satisfying the deadline of AB
17 1054.

18 THE COURT: No, I know that.

19 MR. STAMER: And if we succeed, Your Honor, if our
20 plan is confirmable like we are certain that it is, then Judge
21 Donato is free to take on his very substantial other docket and
22 we don't further him (sic) -- we don't burden him further. And
23 if we're wrong, if Your Honor, based upon what you hear from
24 the TCC and from the debtors, say (sic), I'm not comfortable --

25 THE COURT: Well, wait, let me -- time out. Suppose I

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1 went exactly with your time line and we got to the point where,
2 okay, it's January 21st and whatever time it takes to do
3 that -- and I listen to the issues and I'm prepared to say,
4 well, I'm prepared to confirm this plan when the other plan has
5 either failed or -- the vote, or it has not failed, and then I
6 have to make a choice. Isn't that what would happen anyway?

7 MR. STAMER: Well, Your Honor, our view is -- our
8 proposed schedule is no. If you have a confirmed plan, if you
9 have found that our settlement -- our plan is fair and
10 equitable, it doesn't overpay the torts --

11 THE COURT: Yeah? And I have to confirm it then? I
12 just tell the --

13 MR. STAMER: Well, you --

14 THE COURT: -- other ones, "No luck"?

15 MR. STAMER: Well, we can talk about --

16 THE COURT: But I don't think that's what the --

17 MR. STAMER: -- what you have to do -- you're the
18 judge.

19 THE COURT: I --

20 MR. STAMER: You don't have to do --

21 THE COURT: No, no. I have to do what the Code says.
22 And I don't think the Code says that you can -- you dump a
23 debtor's plan because some other plan could be confirmed --

24 MR. STAMER: Let me address that. And the way I'd
25 address it is, if you find that our settlement is reasonable

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1 and our plan is fair and equitable to the tort claimants, so
2 the claims are in excess of 25.5, the debtors' plan, as
3 sponsored by equity, is DOA; it's because they don't have the
4 financing; it's a condition precedent to confirmation.

5 THE COURT: But, Mr. Stamer, that, again, is the --
6 that's -- you're asking me to say your plan is confirmable,
7 therefore the debtor doesn't even get to show how its plan's
8 confirmable.

9 MR. STAMER: Your Honor, if --

10 THE COURT: And I guess I don't know how I am allowed
11 to do that.

12 MR. STAMER: Well, Your Honor, if you -- and again,
13 I -- if Your Honor wants to allow us to go forward and then you
14 can hold in reserve confirmation pending --

15 THE COURT: Well, that's what I said a minute ago.
16 That's what I said.

17 MR. STAMER: Yeah, that --

18 THE COURT: I don't know why that -- I don't know why
19 that's efficient. But look, if the debtor --

20 MR. STAMER: The --

21 THE COURT: -- stands up and says, "We throw in the
22 towel. We don't have a plan to promote," then if you've got
23 your plan ready to be confirmed or ready to be confirmed on a
24 schedule, then you're fine. But if the debtor's still in the
25 game, I don't believe at this point that the law says, well,

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1 sorry, Debtor, your plan doesn't even get tested, because you
2 got this other plan.

3 MR. STAMER: Your Honor, look, I think everyone will
4 agree this is a case potentially unlike any other.

5 THE COURT: We've all agreed. We ought to give it a
6 number.

7 MR. STAMER: Deadline -- right. Well, that
8 argument -- number 1. That'll be number 1.

9 THE COURT: Number 1.

10 MR. STAMER: Okay. The efficiency with our
11 approach -- and again, Your Honor, I don't know if you'll agree
12 or not -- is, if we get to confirmation, you render unnecessary
13 everything else. And it's not a question of trying to
14 disadvantage the debtor. What it is is -- as a prerequisite --

15 THE COURT: Of course it is.

16 MR. STAMER: As a --

17 THE COURT: You're not in this for charity either.

18 MR. STAMER: As a -- fair enough. As a prerequisite
19 to you confirming our plan, Judge, fair and equitable, Your
20 Honor, you need to find that we don't violate the absolute-
21 priority rule.

22 THE COURT: I got that but, look, the -- we're having
23 a debate that I'd rather defer for a little while. But the way
24 I see it is, if you have the -- and I took your lead and TCC's
25 strong opinion to do what was a change of position, by

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1 obviously my prior ruling. So I said, okay, we're going to
2 have two plans. But implicit in that, in my mind, among other
3 things, was to make sure one of them would make it to the
4 finish line.

5 So you're saying, okay, mine's going to finish first.
6 The other side, by the way, hasn't spoken to the issue yet.
7 I'm sure they have a different take on your time line. But
8 either -- doesn't matter. I don't think the Code says that,
9 okay, because I gave you preference, if you will, that, once
10 you convince me it's confirmed, I just confirm it and we're
11 done and everybody goes home. It means, no, I give the debtor
12 an opportunity, under this record, to put on its plan and, if
13 the debtor has a confirmable plan, then I let the voters vote
14 and, if they vote for both plans, I have to make the choice.
15 If they vote for one and not the other, they've made the
16 choice. Isn't that the law?

17 MR. STAMER: Again, argument number 1: this is a case
18 like no other.

19 THE COURT: Right.

20 MR. STAMER: The goal has to be to do whatever is
21 necessary to minimize risk and maximize the likelihood we
22 satisfy the time requirements of --

23 THE COURT: Correct.

24 MR. STAMER: -- 1129.

25 THE COURT: Correct.

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1 MR. STAMER: If -- Your Honor, we'd be open to talking
2 to Your Honor, to the company, about some kind of a hybrid
3 approach. If Your Honor is focused on Judge Donato making the
4 estimation proceeding, we can front-end every --

5 THE COURT: Listen, my number-one "A" goal is to put
6 Judge Donato out of business by taking it out of his hands.
7 But at the moment I haven't got the solution yet. I'm working
8 on it.

9 Let's go back to the immediate -- let's talk --

10 MR. STAMER: Fair enough.

11 THE COURT: -- about the schedule -- the -- I'm not
12 saying I won't consider your sequence, but I'm --

13 MR. STAMER: Okay.

14 THE COURT: -- simply not going to put the debtors'
15 plan on the backburner and take yours all the way through to
16 confirmation. So let's go back to the briefing schedule.

17 MR. STAMER: Okay.

18 THE COURT: Do you have a problem with --

19 MR. STAMER: We have --

20 THE COURT: -- what Mr. Karotkin and I --

21 MR. STAMER: We have two problems.

22 THE COURT: Okay.

23 MR. STAMER: The first is, we don't want one brief on
24 our side. So there are -- you're going to hear from new
25 participants in this process. There is an ad hoc trade

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1 committee who is going to assert that they have an entitlement
2 to, I believe, statutory -- California statutory interest. I
3 won't speak for them. I believe there's an unsecured-bank-debt
4 group that has issues with respect to their interest rates. We
5 have the official committee, the indenture trustee. We have
6 us. Under our plan, these are very significant issues. Under
7 the debtors' plan, they're north of six billion dollars.

8 So what we -- two things, Your Honor. We think there
9 could be a little more slack in the schedule so that it would
10 be pushed back by a couple of weeks if in fact Your Honor wants
11 to do it as part of -- as separate and apart from confirmation.
12 And at the very least, the January 6th date, at the end of the
13 make-whole -- we have people that are not available, so we'd
14 need to -- at the very least, we'd need to roll that date.

15 THE COURT: Well, but let's stick with what --

16 MR. STAMER: Sure.

17 THE COURT: -- what Mr. Karotkin called the post-
18 petition interest. So you're telling me there's some other --
19 I mean, I just don't have the ability to have half a dozen
20 different groups with separate briefing and then put them all
21 in one great big bundle. I'll do it if we have to, and I'll
22 stretch it out if we have to, but can't we just start with an
23 alternative to the post-petition -- the point was opening
24 briefs.

25 MR. STAMER: I think we're fine with that, that

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1 everyone -- simultaneous briefing is fine with us.

2 THE COURT: Right.

3 MR. STAMER: But what --

4 THE COURT: But what I'm getting at is --

5 MR. STAMER: Yeah.

6 THE COURT: -- do you -- let's focus -- you.

7 MR. STAMER: Yeah.

8 THE COURT: And you're only here representing your
9 group.

10 MR. STAMER: Yep.

11 THE COURT: You can brief your view of the world on
12 the post-petition-interest thing. You're entitled to post-
13 petition interest under your plan and presumably under their
14 plan; right?

15 MR. STAMER: We'd have to do both, I believe.

16 THE COURT: That's right.

17 MR. STAMER: Right.

18 THE COURT: That's right. And are you telling me that
19 four different creditor groups want to have separate briefing
20 on that? I guess I need to hear from them today, but I don't
21 know why they can't --

22 MR. STAMER: You'll hear from the indenture trustee
23 and --

24 THE COURT: Yeah.

25 MR. STAMER: -- you'll hear from the official

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1 creditors' committee.

2 THE COURT: Yeah. Okay.

3 MR. STAMER: So leaving aside the two additional ad
4 hoc groups that have surfaced, that would be our preference
5 that we don't just collaborate on one brief that we -- and we
6 can talk about appropriate page limits and all that, but we
7 would rather not do it with one consolidated brief.

8 THE COURT: Okay. But are you -- do you have a
9 problem with the timetable for that one?

10 MR. STAMER: Again, what we'd like to do is kind of
11 roll the entire schedule to the extent -- to the extent we can.
12 So the arguments would be later in January or the --

13 THE COURT: Well, wait; for the post-petition, now
14 we've got November 8, November 22nd, and December --

15 MR. STAMER: December 11th.

16 THE COURT: -- 11. December 11. So you're proposing
17 moving that out --

18 MR. STAMER: Exactly.

19 THE COURT: -- to a later -- to how far?

20 MR. STAMER: We'd ask for a month.

21 THE COURT: And why? I guess my question is, for
22 somebody that wants to move the plan faster, why do you want to
23 slow down this process?

24 MR. STAMER: Your Honor -- I'm sorry. So to the
25 extent we're talking about operating under our construct, so

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1 getting a head start on the issues in our plan upfront, then I
2 think the only thing we probably need to move is the January 6
3 date --

4 THE COURT: Okay.

5 MR. STAMER: -- because people aren't available.

6 THE COURT: I can accommodate that.

7 MR. STAMER: Okay.

8 THE COURT: But January 6th is not a post-petition-
9 interest date.

10 MR. STAMER: No, I'm sorry; that's the separate --

11 THE COURT: Okay. So --

12 MR. STAMER: That's make-whole. That's --

13 THE COURT: So let's --

14 MR. STAMER: -- redemption premium.

15 THE COURT: Just for a minute --

16 MR. STAMER: Okay.

17 THE COURT: You, speaking for your client, have a
18 problem with November 8th, November 22nd, December 11, on
19 post -- on the post-petition interest and related question?

20 MR. STAMER: Your Honor, we would like -- we would
21 like to push that for a limited period of time, to give
22 everybody -- whether it's a week, two weeks, three weeks,
23 whatever --

24 THE COURT: Give me some specifics and I'll see if it
25 works. I mean, I've got a calendar. I don't have a huge trial

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1 crushed with other matters, but I still have to do certain
2 things. So tell me what you think will work.

3 MR. STAMER: Why don't we move everything two weeks.

4 THE COURT: And can you tell me --

5 MR. KAROTKIN: Your Honor, it was already moved two
6 weeks by their delay.

7 THE COURT: Yeah.

8 MR. KAROTKIN: I mean, this is ridiculous.

9 THE COURT: But why is this necessary, Mr. Stamer?
10 These are just legal arguments. I mean, is this something --
11 somebody has pressing personal commitments or --

12 MR. STAMER: I -- again, they're important issues; we
13 just want to make sure that we have appropriate -- and we've
14 got a number of people involved in the process.

15 THE COURT: Today's October 23rd. The first brief
16 would be due in two weeks.

17 MR. STAMER: I understand, Your Honor. I understand,
18 Your Honor. If there's flex in the schedule --

19 THE COURT: See, I'm having a little bit of a problem
20 saying we got this time, we want to go quick, quick, quick,
21 but, by the way, slow down the briefing here.

22 I'll tell you what.

23 MR. STAMER: Sure.

24 THE COURT: Mr. Stamer, for post-petition interest,
25 I'm going to stick at least tentatively with the dates Mr.

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1 Karotkin suggested. I'll wait and hear from other parties that
2 want to be heard.

3 Now, on the make-whole and on the
4 impaired/unimpaired -- I got to keep my dates straight here.
5 Yeah. We've got -- I'm sorry, I got my dates mixed up. Yeah,
6 we got the November 21st, December 13, January 6. January 6 is
7 not convenient; we'll make it another January date. But what
8 is your pitch for changing the opening and reply-brief dates
9 for the November 21 and December 13 date?

10 MR. STAMER: Your Honor, I had very little success
11 asking to move the original dates, so all I would ask at this
12 point is to move the January 6 date to the following week.

13 THE COURT: Mr. --

14 MR. STAMER: I understand the need for efficiency, and
15 our hope is we can move this process along very quickly. My
16 only point was, if we're doing it as a dual track where we're
17 not targeting a January 18th confirmation hearing or initial
18 confirmation hearing, then there's more slack in the --

19 THE COURT: I'm not saying --

20 MR. STAMER: -- in the schedule.

21 THE COURT: -- that we aren't. I haven't --

22 MR. STAMER: Oh. Okay.

23 THE COURT: -- heard from the other side on that. I
24 mean, I realize, as I said at the start of the hearing, that,
25 having read the briefs from yesterday that came in and got

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1 (sic) from you yesterday, I realized that even my own thinking
2 of some of these dates may have changed. And I -- this is
3 very, very fresh --

4 MR. STAMER: I --

5 THE COURT: -- for me to even process.

6 MR. STAMER: -- completely understand.

7 THE COURT: So what is -- what date in January is more
8 convenient for you for argument? And again, is it personal or
9 is it someone other -- again, I don't need to know anybody's
10 personal schedule. I just want to know when is the --

11 MR. STAMER: If we can do it the -- if we can do it
12 the following week.

13 THE COURT: Mr. --

14 MR. STAMER: Any day the following week is --

15 UNIDENTIFIED SPEAKER: We can do it on the 14th.

16 THE COURT: Huh?

17 MR. STAMER: -- probably fine.

18 UNIDENTIFIED SPEAKER: January 14.

19 THE COURT: 14th.

20 MR. STAMER: January 14. Okay.

21 THE COURT: Okay, let's do this, then, because I want
22 to let other people speak: So I'm going to -- I'm going to
23 make one change to the dates that I scheduled with Mr.
24 Karotkin, and that's to move that January date from the 6th to
25 the 14th. And I guess what somebody needs to tell me about is

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1 whether we do separate briefs. But I need to hear from people
2 on that. I can't keep track of them all. So -- I mean, I
3 managed to do it. We did it on the 502(c); we do separate
4 briefs. We're doing it.

5 MR. STAMER: Okay. Thank you, Judge.

6 THE COURT: All right. So who wishes to be heard on
7 that? Mr. -- for the creditors' committee.

8 MR. BRAY: Good morning, Your Honor. Gregory --

9 THE COURT: Yes, Mr. --

10 MR. BRAY: -- Bray, Milbank LLP --

11 THE COURT: Right.

12 MR. BRAY: -- counsel for the committee.

13 THE COURT: Right. Mr. Bray.

14 MR. BRAY: On the dates, my comments are in the
15 context of the question you've asked on the other issue of fast
16 track. I will note the committee favors fast-tracking as much
17 as we possibly can in this case.

18 THE COURT: Okay.

19 MR. BRAY: We have expressed our concern several times
20 to the Court.

21 THE COURT: So you like those days we just heard?

22 MR. BRAY: Well, we'll get to those. Yes. I'm not
23 disagreeing with the dates. But as a general matter, as many
24 confirmation issues as we can fast-track, the better. If we
25 could fast-track a confirmation --

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1 THE COURT: Are there some other ones --

2 MR. BRAY: -- or both --

3 THE COURT: -- you can think of that, no, you
4 haven't --

5 MR. BRAY: We're going to give that more thought.
6 Obviously, Mr. Stamer, the bondholders, and the TCC have made a
7 proposal to you about fast-tracking confirmation. We find it
8 intriguing. I understand that there are --

9 THE COURT: I'm not opposed to it.

10 MR. BRAY: -- issues with it. I --

11 THE COURT: I just have to --

12 MR. BRAY: I understand.

13 THE COURT: -- absorb it.

14 MR. BRAY: And I am qualifying what I'm about to say,
15 by that. What I'm about to say is what I said in my letter to
16 you in response to Mr. Karotkin's letter, which is, we did
17 have -- we have discussed the dates Mr. Karotkin laid out.
18 There's no -- we're not going to deny that. What's changed
19 since then is that we have been contacted by a number of
20 parties who have large unsecured claims, advising us they wish
21 to participate in the process. And as a fiduciary for the
22 unsecured creditors, at least the non-wildfire victims, we felt
23 it incumbent to advise the Court of that and to try to arrange
24 a briefing schedule that will accommodate the interest of the
25 various parties.

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1 The two issues you've mentioned -- PPI and the
2 redemption -- they're significant issues. And they may not be
3 squarely issues of first impression, but we think that
4 Cardelucci -- and I'm not asking you to respond -- does not
5 squarely address the issues. There are issues that go well
6 beyond that. And the make-whole issue is -- while not novel in
7 the Ninth Circuit, these particular facts, there's a lot of
8 briefing to be done. And there's significant dollar issues
9 involved. And as I said, a number of significant creditors
10 have advised us they want to be heard and participate --

11 THE COURT: Okay.

12 MR. BRAY: -- on this --

13 THE COURT: I'm not --

14 MR. BRAY: Yeah. Yeah.

15 THE COURT: -- saying no.

16 MR. BRAY: Yeah. -- as they would in confirmation.

17 So having said that --

18 THE COURT: Well, I mean, again, every -- I'll keep
19 repeating it. To me, we are dealing with confirmation right
20 now. We're breaking it into little pieces.

21 MR. BRAY: And that's exactly why I think people are
22 saying they want to be heard --

23 THE COURT: Okay.

24 MR. BRAY: -- as they would --

25 THE COURT: That's fine.

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1 MR. BRAY: -- at confirmation. We're going to treat
2 it in that fashion as well, Your Honor.

3 Having said that, we do intend to submit briefs on
4 both issues. The PPI issue, the post-petition-interest issue,
5 squarely affects our constituency, so we will be active in that
6 briefing.

7 THE COURT: No, that's fine. I --

8 MR. BRAY: Yeah.

9 THE COURT: But tell me what you have --

10 MR. BRAY: The --

11 THE COURT: -- position on the timing.

12 MR. BRAY: I -- we're fine, as the committee, with the
13 dates you've raised. I'm not going to speak for others,
14 because some creditors have just been made aware of what's
15 happening and they may need more time. We've been aware of the
16 issues for a while. But no notice went out to creditors, other
17 than what happened in the courtroom. So I think you're going
18 to hear from some people they were sort of caught off guard by
19 this. That's why we pulled back from the negotiations, to give
20 them a chance to be heard. I know I'm being repetitive on
21 this, but that was important to us.

22 Having said that, and after you've heard from them and
23 weighed the various issues, we're fine proceeding on the time
24 line that you've outlined as modified through your various
25 discussions here. We do think that separate briefs are

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1 probably required. I know you don't want to read the same
2 brief ten times, and the parties will have to try to manage
3 that, but I suspect that there will be parties that will take
4 divergent or separate interests here and they will want to
5 brief those issues.

6 THE COURT: Okay.

7 MR. BRAY: And I think that's the main point I want to
8 make. And where we probably part company with the debtor is we
9 do believe that separate briefing, for the issues -- and then
10 multiple briefs, too, on each issue, in other words, multiple
11 parties will want to submit on the issues -- that's the
12 important issue for us, Your Honor.

13 THE COURT: Okay. All right, so, Mr. Julian, let's
14 hear from --

15 Or, Ms. Dumas, do you want to speak to these issues
16 specifically? Because I'm seeing -- the other attorneys want
17 to be heard. So -- I don't know whether you do or don't, on
18 the schedule.

19 MS. DUMAS: Your Honor, the TCC believes that these --
20 Cecily Dumas, Baker Hostetler, appearing on behalf of the
21 official committee of tort claimants.

22 These, as Mr. Bray said, are extremely important
23 issues in the case, issues of --

24 THE COURT: They don't quite affect your clients
25 specifically, though, right?

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1 MS. DUMAS: They don't affect us --

2 THE COURT: Yeah.

3 MS. DUMAS: -- specifically, which is why we're
4 monitoring. We're going to stand down on arguments about
5 briefing. We'll accommodate other parties. But we do believe
6 that they are threshold issues that should be addressed by the
7 Court sooner rather than later.

8 THE COURT: But the invitation's still to you and
9 your --

10 MS. DUMAS: Absolutely.

11 THE COURT: -- colleagues, too, to make sure, if there
12 are other confirmation issues that can be ticked off and dealt
13 with earlier -- I realize that there are some issues doing
14 that, but I think it -- something I'm trying to do. You don't
15 have to do it today but, I mean, if it's something that --
16 something we should remember to get addressed, let's do it no
17 matter which time line we're on here.

18 MS. DUMAS: Yeah; thank you, sir.

19 THE COURT: Okay?

20 MS. DUMAS: That's -- we appreciate that suggestion
21 this morning, and we're taking it to heart. Nothing is on our
22 minds today, but we'll bring it back to Your Honor.

23 THE COURT: Okay.

24 All right, so I have a number of counsel standing.
25 Let's get appearances. And tell me -- again, I've read --

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1 trying to keep track of everybody, but give me your name.

2 MR. D. FELDMAN: Good morning, Your Honor. David
3 Feldman, Gibson Dunn & Crutcher, on behalf of the newly formed
4 ad hoc committee of holders of trade claims.

5 THE COURT: Ad hoc, trade.

6 MR. D. FELDMAN: I represent --

7 THE COURT: Okay.

8 MR. D. FELDMAN: -- a -- we filed a 2019 in this case
9 and expect that we'll be filing a supplemental 2019 probably in
10 the near term. We represent several hundred million dollars'
11 worth of trade claims in this case, for holders of the claims,
12 who have provided services and goods to this company.

13 I frankly -- my retention in this case is principally
14 to deal with the issue of post-petition interest. Frankly, we
15 have problems with, and believe there are objections --
16 appropriate objections to, both the debtors' plan and the TCC
17 ad hoc noteholder plan on the post-petition-interest rate
18 that's being proposed to the alleged unimpaired class of
19 general unsecured claims. We'd like to be heard on that issue.

20 THE COURT: Well, give me a preview. I mean,
21 obviously we know what the debtors' position is with
22 Cardelucci, but --

23 MR. D. FELDMAN: We believe that Cardelucci --

24 THE COURT: -- you --

25 MR. D. FELDMAN: -- as you've heard from --

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1 THE COURT: -- you believe it doesn't apply?

2 MR. D. FELDMAN: -- as you've heard from others, does
3 not apply --

4 THE COURT: Okay.

5 MR. D. FELDMAN: -- does not apply in this case.

6 THE COURT: So what does?

7 MR. D. FELDMAN: And --

8 THE COURT: Doesn't it vary with your different
9 creditors for the trade?

10 MR. D. FELDMAN: I think that our arguments are a
11 corollary to the bondholder arguments, that if the contract
12 rate of interest is appropriate for them, that a contract rate
13 or an implied contract rate of interest for trade creditors
14 would be applicable in our case. California Civil Code 3289
15 provides that if you have a contractual relationship with a
16 company and that contract does not specify an interest rate,
17 the California state statute says you're entitled to interest
18 at ten percent.

19 THE COURT: What does the bankruptcy law say?

20 MR. D. FELDMAN: What does the bankruptcy law say on
21 that?

22 THE COURT: Well, that's where we're applying this.

23 MR. D. FELDMAN: I believe that there's -- I believe
24 there's Ninth Circuit precedent -- and I don't want to go into
25 all the arguments today --

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1 THE COURT: No, I just want a preview of what your
2 issue is. In other words --

3 MR. D. FELDMAN: I believe there're Ninth -- there's
4 Ninth Circuit precedent --

5 THE COURT: Let me rephrase my question.

6 MR. D. FELDMAN: Yeah.

7 THE COURT: If I take the suggestion that maybe
8 Cardelucci doesn't apply here --

9 MR. D. FELDMAN: Right.

10 THE COURT: -- what does apply?

11 MR. D. FELDMAN: I think that one of the cases that
12 you would look to would be Sylmar, Ninth Circuit case --

13 THE COURT: Right.

14 MR. D. FELDMAN: -- in which the court approved in
15 that case an unimpaired class of contract rate of interest for
16 those with an interest rate, and a ten-percent state statutory
17 rate for those that didn't have a contractual --

18 THE COURT: Okay.

19 MR. D. FELDMAN: -- express contractual rate of
20 interest.

21 THE COURT: All right, but it still is --

22 MR. D. FELDMAN: I think that squarely applies.

23 THE COURT: -- a question of -- well, I mean, it's a
24 question of law applied to -- Creditor A might be one rate,
25 Creditor B another rate, in your case. I mean, are your

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1 creditors all similarly situated in that --

2 MR. D. FELDMAN: Yes.

3 THE COURT: Okay. Well --

4 MR. D. FELDMAN: Yes.

5 THE COURT: -- all right, so what do you want me to
6 do? Do you just want to --

7 MR. D. FELDMAN: So we'd like -- we'd --

8 THE COURT: -- have a right to brief?

9 MR. D. FELDMAN: We'd like to be -- we'd like to have
10 the opportunity to write our own brief. We don't intend to
11 duplicate the efforts of others.

12 THE COURT: Okay.

13 MR. D. FELDMAN: But we would like to file our own
14 brief.

15 THE COURT: You have any problem with the schedule?

16 MR. D. FELDMAN: We do not have any issues with the
17 schedule. We're ready to -- we're ready --

18 THE COURT: Okay, I'll come back to --

19 MR. D. FELDMAN: -- to go.

20 THE COURT: -- the briefing in a minute. Thank you,
21 Mr. Feldman.

22 MR. D. FELDMAN: Thank you, Your Honor.

23 THE COURT: Who's next?

24 Good morning.

25 MR. GRAULICH: Good morning, Your Honor. Timothy

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1 Graulich of Davis Polk & Wardwell, on behalf of Citibank as
2 agent for the three-billion-dollar-utility revolver.

3 THE COURT: I just -- could you spell your name for
4 me? I didn't recognize it.

5 MR. GRAULICH: Sure. Last name is G-R-A-U-L-I-C-H.

6 THE COURT: Mr. Graulich. Okay, thank you.

7 MR. GRAULICH: Thank you, Your Honor. And Your Honor
8 may recall, my firm had sent a letter to Your Honor about this
9 issue in response to Mr. Karotkin's original letter with
10 respect to briefing. But very briefly, Your Honor; I think
11 that the banks and the bonds are probably pretty aligned with
12 respect to these issues, provided that we're talking about just
13 the legal issues. And to be clear, the legal issue I'm talking
14 about is post-petition interest.

15 THE COURT: Right.

16 MR. GRAULICH: The banks don't have a view with
17 respect to make-whole.

18 THE COURT: Right.

19 MR. GRAULICH: And as to post-petition interest, the
20 legal question -- I think we could find -- we would reserve our
21 right to file our own separate brief but, frankly, we've been
22 working well with the other similarly situated parties. It may
23 well be that --

24 THE COURT: But you're on the --

25 MR. GRAULICH: -- we don't need to.

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1 THE COURT: -- you're on the side of the senior
2 bondholders, right?

3 MR. GRAULICH: Correct, Your Honor. With respect to
4 the legal issue, I just wanted to flag --

5 THE COURT: Yeah.

6 MR. GRAULICH: -- the fact, as long as we keep this to
7 the core legal issue, I think there's general alignment and we
8 may be able to minimize or even eliminate what of a -- a
9 separate pleading that we may need to file.

10 I will note that, if there is contractual rate of
11 interest, how we go about calculating that would be on a -- we
12 have parochial questions with respect to that, that we've been
13 in discussions with the company about since almost the date of
14 the filing. So, provided that we are keeping this to the legal
15 question, that's great. There may be a second question in the
16 future, factually, about how one would go about calculating
17 that contract rate of interest --

18 THE COURT: Yeah. No, that's fine.

19 MR. GRAULICH: -- for the bank debt.

20 THE COURT: Okay, so -- but it sounds to me like
21 you're willing to just join with the senior bondholders on a --
22 join in the brief with them?

23 MR. GRAULICH: Well, let's put it this way: I think,
24 whether it's the senior bondholders or the creditors'
25 committee, because I understand that they both may want to file

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1 something, we certainly don't want to speak for others to
2 combine other briefs that may need to be separate. But our
3 intention is to work cooperatively with them. If we are okay
4 with what's being filed, we may sign off on that brief or just
5 a short joinder.

6 THE COURT: A "me too".

7 MR. GRAULICH: Yeah. And if there's -- and, for
8 whatever reason, if it turns out that we -- and this is not
9 what I would expect; if we can't collaborate, we may file
10 something separately. But that's not my -- that's not my
11 intention or --

12 THE COURT: Okay.

13 MR. GRAULICH: -- impression at this moment.

14 THE COURT: Okay.

15 MR. GRAULICH: Thank you, Your Honor.

16 THE COURT: Fine. Thank you, Mr. Graulich.

17 Good morning. Still morning.

18 MR. ABRAMS: Your Honor, my name is Will Abrams.

19 Respectfully, a little concerned about the schedule, in terms
20 of all parties --

21 THE COURT: Just tell me who your client is.

22 MR. ABRAMS: Sure. I'm a party to the CPUC
23 proceedings, a wildfire survivor, and a claimant as well, and
24 just very concerned that the schedule associated with the
25 proceedings isn't taking into consideration the feasibility

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1 earlier in the schedule. So --

2 THE COURT: Sorry; taking the schedule what?

3 MR. ABRAMS: The feasibility --

4 THE COURT: What --

5 MR. ABRAMS: -- earlier in the schedule. So, part of
6 what I don't see in any of the plans that are being proposed is
7 risk mitigation and what's going to occur there.

8 THE COURT: We're only --

9 MR. ABRAMS: And none of the --

10 THE COURT: We're only talking about timing for
11 briefing some very legal questions at the moment, Mr. Abrams.
12 I'll come back to you when I can, but I'm trying to line up all
13 the lawyers representing the groups who want to be heard on
14 this interest issue. I can't deal with other matters at the
15 moment.

16 MR. ABRAMS: Okay. I can come back on that. I
17 apologize, Your Honor.

18 THE COURT: Yeah, I mean, it's not --

19 MR. ABRAMS: Just concerned that --

20 THE COURT: No, you don't have to apologize. I --

21 MR. ABRAMS: -- that we're moving forward very quickly
22 to meet an arbitrary deadline while at the same time missing
23 the mark in terms of focusing on safety. And given the current
24 circumstances and --

25 THE COURT: Mr. Abrams, my job is to deal with whether

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1 a plan can be confirmed. And --

2 MR. ABRAMS: I understand, Your Honor.

3 THE COURT: And if you or someone else believes that
4 one or the others of these plans has some safety concerns, I'm
5 not sure that I'm the right one to say; but if I am, you object
6 to confirmation and raise your argument or you take it up with
7 the CPUC.

8 MR. ABRAMS: But I don't see that being introduced in
9 terms of the schedule, in terms of --

10 THE COURT: Well, because we're talking about --

11 MR. ABRAMS: -- parties coming forward and saying,
12 here's what we're going to do to mitigate risk, to make sure --

13 THE COURT: Mr. Abram (sic) --

14 MR. ABRAMS: -- that our dollars --

15 THE COURT: Mr. Abram --

16 MR. ABRAMS: -- are appropriate for --

17 THE COURT: Mr. Abram --

18 MR. ABRAMS: -- how we're moving forward.

19 THE COURT: Mr. Abram, I think you're missing the
20 point. I'm trying to schedule how to decide whether this plan
21 can be confirmed. Safety is important; it's not necessarily
22 something I can deal with. But to the extent that the
23 bankruptcy court can deal with it, I'll deal with it, but not
24 this morning, because I'm dealing with these other issues this
25 morning.

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1 MR. ABRAMS: I understand, Your Honor.

2 THE COURT: Okay. Thank you.

3 MR. ABRAMS: Thank you.

4 THE COURT: All right. For briefing schedules, who's
5 up?

6 MR. GUESS: Good morning, Your Honor. David Guess
7 with Bienert Katzman. With me is my co-counsel, Adam Harris of
8 Schulte Roth & Zabel. We're here on behalf of Anchorage
9 Capital Group, Centerbridge Partners, Fidelity Management and
10 Research Company, Silver Point Capital, and SteelMill --

11 THE COURT: And what kind of --

12 MR. GUESS: -- Master Fund.

13 THE COURT: -- creditors are they? What --

14 MR. GUESS: These are unsecured -- well, they -- we
15 filed a 2019 statement yesterday --

16 THE COURT: Just tell me --

17 MR. GUESS: -- and an amended one this morning.

18 THE COURT: Just tell me what the nature of their
19 claims --

20 MR. GUESS: They --

21 THE COURT: I mean, what are they?

22 MR. GUESS: They're multiple natures, but they have
23 unsecured bond debt.

24 THE COURT: Okay.

25 MR. GUESS: And then we're representing them in that

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1 capacity.

2 THE COURT: Okay. And what's your desire?

3 MR. GUESS: Mr. Harris -- we filed a pro hac
4 application for him yesterday.

5 THE COURT: It's okay. He can be heard.

6 MR. GUESS: So we -- with your permission, we'd like
7 him to speak.

8 THE COURT: Sure.

9 Good morning, Mr. Harris.

10 MR. HARRIS: Thank you, Your --

11 THE COURT: I'm sorry. And the other gentleman, I
12 just didn't get your name.

13 MR. HARRIS: David Guess.

14 THE COURT: Guess?

15 Okay, Mr. Harris, what would you like to have me do?

16 MR. HARRIS: Your Honor, I would like to answer
17 actually one of the questions that you posed to multiple
18 counsel this morning, about whether there're issues, other than
19 those that people have been focusing on, that give rise to
20 serious concerns regarding confirmation and should be put into
21 the calendar. If Your Honor would like to finish up on the
22 briefing schedule with respect to the matters you've been
23 dealing with --

24 THE COURT: Well, I mean, that's what I --

25 MR. HARRIS: -- it's --

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1 THE COURT: I've got -- I'm trying to keep track of
2 all the briefing schedules, but I --

3 MR. HARRIS: If you'd like to finish that up, Your
4 Honor, we can come back -- we can come back --

5 THE COURT: Well, do you have some specifics --

6 MR. HARRIS: Not on those --

7 THE COURT: -- on the briefing schedule?

8 MR. HARRIS: -- specific ones. I wanted to bring to
9 Your Honor's attention some other matters which I think need to
10 be put on their own set of schedules. But I'd be happy to --

11 THE COURT: Yeah, let's --

12 MR. HARRIS: -- allow you to finish up on this.

13 THE COURT: -- let's finish the schedule -- my
14 briefing schedule.

15 MR. HARRIS: That's fine, Your Honor.

16 THE COURT: Thank you, Mr. Harris.

17 MR. SILFEN: Good afternoon, Your Honor. Andrew
18 Silfen with Arent Fox, counsel -- well, it's afternoon for me
19 in New York -- BOKF, the indenture trustee for the senior notes
20 in --

21 THE COURT: Right.

22 MR. SILFEN: -- the principal amount -- excess of
23 seventeen-and-a-half billion dollars. I guess I get to go
24 clean up and kind of tie this all together.

25 And what Mr. Stamer's presented is very appealable

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1 (sic) and something we should all think about. I just want to
2 address the questions you have with respect to scheduling of
3 the ripe disputes. And we have been active the whole time in
4 trying --

5 THE COURT: Yes.

6 MR. SILFEN: -- to get an agreement to present to Your
7 Honor, and we just want a workable, fair, and balanced schedule
8 that enables the issues to get fully briefed and presented to
9 Your Honor and considered by Your Honor. And towards that end,
10 the group that was involved that was here at the last hearing
11 agreed to concurrent simultaneous open briefs and concurrent
12 simultaneous reply briefs.

13 Where we had a disagreement is as to page limits and a
14 disagreement as to whether each side would file one brief or
15 individual --

16 THE COURT: Right.

17 MR. SILFEN: -- briefs, and we want to just make sure
18 there's reasonable time as we work through this today that we
19 take all considerations in setting the schedule.

20 So the easier one which is post-petition interest
21 where there appears to be some alignment among the parties, at
22 least as to the legal issue, there are separate issues as to
23 each holder or -- no, sorry, as to each claim --

24 THE COURT: It's not what we're dealing with.

25 MR. SILFEN: -- as to amount. But if Your Honor is

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1 going to move into a direction of coordination between the
2 side -- our side versus their side, or Your Honor's going to
3 try to implement some process where there is a joint brief, and
4 maybe supplement briefs, we're going to need more time than the
5 date that's been presented by Mr. Karotkin.

6 It's not the drafting per se that can't be made on a
7 day, but if there's going to be an obligation to coordinate or
8 some kind of joint brief, at least amongst some of the parties,
9 I think realistically it's just going to take a little more
10 time --

11 THE COURT: When --

12 MR. SILFEN: -- to get their -- well --

13 THE COURT: -- when -- what are you proposing?

14 MR. SILFEN: It's easy for me to say. But --

15 THE COURT: Yeah, I know. Well --

16 MR. SILFEN: -- well, probably a couple of more weeks
17 with respect to post-petition interest would probably make
18 sense and would probably be workable.

19 The harder issue is the make whole optional redemption
20 which is in a point issue to the senior notes, and a point
21 issue to the indentured trustee. It arises under the indenture
22 where the successor's indenture -- the successor indenture is
23 the signatory to the indenture in the one along with the senior
24 notes who enforces --

25 THE COURT: Well, again, just tell me what the problem

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1 is.

2 MR. SILFEN: Okay. So --

3 THE COURT: We're talking about a brief in a month.

4 MR. SILFEN: Right. So here if you look at, just to
5 kind of illustrate the dispute, if you look at Momentive, EFH,
6 or Ultra which are the same kinds of disputes in other
7 circuits --

8 THE COURT: I don't know what you're talking about. I
9 don't know those cases.

10 MR. SILFEN: -- the briefs -- the briefs in those
11 cases were somewhere between thirty-five and fifty pages, and
12 it's a complex issue and it's a complex issue not only because
13 of incorporating the indentures and the indenture language --
14 there's three indentures, there's twenty-five series of
15 notes -- there's the application of New York law and California
16 law in the indentures, there's state law and federal law we
17 suspect implicated. And again, kind of put this in context
18 because I don't want the burden to go on us, the debtor has the
19 election to refinance the notes or reinstate. It's making the
20 choice to refinance. That is triggering the make whole
21 optional redemption.

22 So it's the decision that the debtor makes. The
23 debtor has the right to make that decision subject to the Code,
24 but the dispute is arising because of the debtor's election.

25 I think that with that in mind, and given the

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1 magnitude of the issue and the complexity, and we want to
2 present it in the best way to Your Honor so Your Honor can
3 consider it an easy and efficient way rather than just, for
4 lack of a better word, vomit on you, is -- and I say that to
5 make a dramatic point because we want to present this in a way
6 that you can make the best ruling possible presented on the
7 papers and argument. That's one.

8 Also, I think the parties are not as aligned with
9 respect to make sure all optional redemption as the post-
10 petition interest. So it's distinguishing.

11 So I think what I'm suggesting is for the make whole
12 optional redemption that you push it out, and what I'm saying
13 if we're doing it in the most accelerated time, which we all
14 agree, we all agree that day at Your Honor's suggestion that it
15 was important to break out these issues, that they're gating
16 issues, and they need to be accelerated basis. I guess the
17 question is how accelerated.

18 Opening briefs, we suggest November 27th.

19 THE COURT: That's six full days from what's proposed.

20 MR. SILFEN: Well, I would ask for more but I'm trying
21 to be reasonable and work with the parties here, because I know
22 Mr. Karotkin's going to stand up and Mr. Bennett's going to
23 stand up and say we got to move, we got to move, we got to
24 move. But any day is helpful.

25 So we're suggesting November 27th, December 20th, and

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1 then have arguments sometime in January.

2 THE COURT: How about --

3 MR. SILFEN: If you're asking me what we real --

4 THE COURT: How about 14th?

5 UNIDENTIFIED SPEAKER: That's fine with me.

6 THE COURT: You're --

7 MR. SILFEN: You know, we had originally propo --

8 THE COURT: You're easy.

9 MR. SILFEN: We had originally proposed and
10 suggested -- and the parties talked about this -- that having
11 the arguments for the post-petition interest and the make whole
12 on different days.

13 THE COURT: I have to ask the folks to stop talking
14 over here. I can't -- I can't get you on the record and I
15 can't hear counsel speak.

16 MR. SILFEN: We had originally discussed, at least the
17 original parties who were trying to come up with a schedule
18 that it may be in your interest and in the -- since the issues
19 are significant, not to have the post-petition interest and the
20 make whole on the same day. That's what we had proposed.

21 THE COURT: But we're not --

22 MR. SILFEN: If Your Honor wants them both on the say
23 that --

24 THE COURT: They're not. They're not. I mean,
25 you're --

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1 MR. SILFEN: I just --

2 THE COURT: -- we dealt with this an hour ago. We've
3 got a schedule and it's moving faster on --

4 MR. SILFEN: That's fine.

5 THE COURT: -- post-petition interests, and the only
6 question is whether other people join in.

7 So you've proposed moving the opening brief on the
8 make whole by six days. Done. You got it. Not a problem.
9 But I mean --

10 MR. SILFEN: And the reply brief, we're suggesting is
11 December 20th.

12 UNIDENTIFIED SPEAKER: And the argument?

13 UNIDENTIFIED SPEAKER: I think it's January. That's
14 fine.

15 THE COURT: I mean, look -- look, that doesn't strike
16 me as difficult. What about combining the brief, though? You
17 said you need separate briefs, right?

18 MR. SILFEN: Well, in having combined briefs assumes
19 that the parties are aligned, right. And --

20 THE COURT: Well, of course. I meant from --

21 MR. SILFEN: -- and it's not --

22 THE COURT: I mean combining with the party you're
23 aligned with.

24 MR. SILFEN: As indentured trustee, we're charged to
25 make and protect the indenture and the rights under the

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1 indenture, and our rights are for all the holders, and our
2 arguments are for the all the holders.

3 It's not exactly here that we're aligned with any
4 other party. The creditors' committee wants to be heard on the
5 issue, and the senior notes and, obviously, the senior notes
6 have a right to be heard on this issue.

7 I think you're only on our side, basically, talking
8 about maybe three parties. We're happy to coordinate, and I'm
9 sure we all will coordinate.

10 THE COURT: Okay.

11 MR. SILFEN: But coordination is different than
12 putting -- requiring one brief.

13 THE COURT: I know. I got it.

14 MR. SILFEN: All right.

15 THE COURT: Okay. Anybody else want to be heard on
16 the briefing schedule?

17 Mr. Minnick? Good morning.

18 MR. MINNICK: Good morning, Your Honor. M. David
19 Minnick of the Pillsbury firm on behalf of Wilmington Trust
20 National Association, the successor administrative agent on the
21 parent company's revolving credit facility syndicate.

22 Mine is a more mundane request, unfortunately, Your
23 Honor. We are the successor trustee. We have had a number of
24 fires trade in our syndicate, and so we are awaiting
25 instructions as to what position they will take, and our goal

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1 here today is simply to preserve the opportunity should we have
2 a position that requires us to go forward and brief, and that
3 we would first, of course, try to work with the party on either
4 side that we are pursuing as a similar position that --

5 THE COURT: Is this for a make whole or for post-
6 petition?

7 MR. MINNICK: Post-petition interest, Your Honor.

8 THE COURT: And -- okay, but --

9 MR. MINNICK: Yeah, so we --

10 THE COURT: -- but you don't --

11 MR. MINNICK: -- the issue we may not need to do
12 anything, but we have to reserve the right to be able to file
13 something on instructions assuming we can't get an agreement
14 with --

15 THE COURT: Well, tell your client your opening briefs
16 are due on November 8th, but you're probably going to be on the
17 reply side anyway. You're not going with the --

18 MR. MINNICK: That's fine. So long as we can have --

19 THE COURT: -- with the debtor's interest, right?

20 MR. MINNICK: So long as we have the ability to put
21 something in front of Your Honor that was all we were asking
22 for.

23 THE COURT: Okay. Anyone else want to be heard?

24 Mr. Bennett are you here for someone from the
25 shareholder's side? Are you going to be agreeing with the

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1 debtor, Mr. Bennett, because if you are, that's fine.

2 MR. BENNETT: With respect to the schedules that
3 you're working through, we are absolutely fine. With respect
4 to Mr. Stamer's effort to accelerate one brief confirmation
5 over another, we would have a lot to say, but I don't think --

6 THE COURT: Yeah, I'm going to come back and deal with
7 that separately.

8 MR. BENNETT: -- we're dealing with that right now.

9 THE COURT: Okay. All right. Well, look, here's what
10 I'm going to do.

11 MR. KAROTKIN: Your Honor?

12 MS. MILLMAN: Your Honor?

13 THE COURT: Yes, on the phone. Yes.

14 MS. MILLMAN: Good afternoon. This is Sherry Millman
15 with Stroock & Stroock & Lavan and I'm speaking on behalf of
16 Mizuho Bank which is the agent for the Colstro (ph.) term loan
17 in the amount of 350 million dollars. Our issue is with
18 respect to post-petition interest only. We are absolutely fine
19 with the amended schedule of submissions by November 8th, et
20 cetera. We, likewise, do not know yet whether we would be
21 weighing in, but we would like to, of course, know that we
22 should have been weighing in. If we do weigh in, we will work
23 cooperatively with those on our side. We haven't communicated
24 with PG&E (indiscernible), but we do want the Court to know
25 that we need to file something additional and we'd like to have

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1 that right as well.

2 THE COURT: Okay. And thank you very much. That's
3 noted.

4 MS. MILLMAN: Thanks.

5 THE COURT: Mr. Karotkin?

6 MR. KAROTKIN: Yes, very briefly.

7 First of all, I didn't hear what Mr. Silfen said about
8 changing the make whole premium schedule.

9 THE COURT: Well, I think he suggested six days, so I
10 was agreeable to moving it to the 27th, and then the reply on
11 the 20th of December. But the date -- we've moved the date to
12 January 14th for the argument.

13 MR. KAROTKIN: Yes, that's fine. Okay.

14 THE COURT: Yeah. No, having -- Mr. Karotkin, I'm
15 probably going to put another burden on you to help me get this
16 all drafted out so it would clear. I don't want to have the
17 oral transcript, or the written transcript be what everybody's
18 relying on. So I thought it was going to be a little easier,
19 but there's too many people. So we'll talk in a few minutes
20 about how to do it.

21 MR. KAROTKIN: Okay. That's fine. I'd like to have
22 the opportunity, as Mr. Bennett said, to address Mr. Stamer's
23 comments about the confirmation scheduling.

24 I will note that with respect to multiple briefs or
25 them getting together to try to file one or two briefs, I find

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1 it hard to understand how the indentured trustee's views could
2 be different than Mr. Stamer's client's views since they're all
3 bondholders. The indentured trustee is also on the UCC, so I
4 really don't understand how it would be difficult to
5 coordinate.

6 I don't want to delay this thing, that's for sure. So
7 if they need to file multiple briefs and there's a reason to do
8 that, we're not going to fight them on that, but we would need,
9 if they are going to file multiple briefs, Your Honor, more
10 than thirty-five pages to address that. So that's the request
11 we would make.

12 THE COURT: Yeah. It's hard for me to keep track of
13 all the pages for now, but I think I -- well, you deem more
14 than thirty-five, is that what you're saying?

15 MR. KAROTKIN: Yes, sir.

16 THE COURT: I mean, again, we're talking about
17 simultaneous briefs in both of these cases.

18 MR. KAROTKIN: So I'm thinking certainly for the
19 reply. Right?

20 THE COURT: Okay. I'll figure out what to do about
21 that.

22 MR. KAROTKIN: Okay. Thank you.

23 THE COURT: All right. Ten minutes? Let's take a
24 ten-minute break and then we'll come back and talk about the
25 confirmation issues, and then more importantly get to the 9019

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1 motion.

2 THE CLERK: All rise.

3 (Recess from 11:54 a.m., until 12:08 p.m.)

4 THE CLERK: All rise. Court is now in session.

5 THE COURT: So Mr. Karotkin, I think it would help me
6 if we wrap up the briefing issue by asking you to, perhaps, you
7 can coordinate with Mr. Zumbro, maybe just do -- maybe one
8 order would be sufficient, that just lays out the briefing
9 sequence for the three different things we talked about -- or
10 four, rather, post-petition, then make whole, impair or not
11 impair together, and then the 502(c), and I'm looking to you to
12 do it to draft it more thoroughly so the titles and the
13 terminology is clear so the reader knows what we're talking
14 about. And I'll make -- and I think I'll run through the
15 deadlines and make sure they're consistent with what you've
16 said -- I mean, what you've noted. And the one thing I'll ask
17 you to do is to submit a proposed order that leaves blank the
18 page limits and I'll just think about it after I've looked at
19 all these other points and fill them in -- and fill in the
20 blanks. Is that doable?

21 MR. KAROTKIN: Yes.

22 THE COURT: Okay.

23 MR. KAROTKIN: The only question with respect to
24 multiple briefs or not multiple briefs, how would you like to
25 address that?

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1 THE COURT: Yeah, let me think about that for a
2 minute, but just make sure we're clear on the dates.

3 So post-petition interests, the opening briefs,
4 November 8th; reply briefs, November 22nd; the oral argument,
5 December 11th at 10 a.m.; the make whole and impair/not impair
6 question, November 27; opening reply, December 20; and oral
7 argument, January 14th.

8 The dates for the 502(c) were a little easier. That
9 was the debtor file its position on what isn't subject to
10 estimations on November 1st. The opposition, item number 15
11 and the debtor's reply December 5th. Excuse me -- yeah, and a
12 hearing on December 17th. And --

13 UNIDENTIFIED SPEAKER: Sorry, Your Honor. There's one
14 other date. The debtor's objection, December 5th and then the
15 creditors' reply December --

16 THE COURT: Yeah, that's the one I forgot about.

17 UNIDENTIFIED SPEAKER: -- December 12 with the
18 creditor's reply.

19 THE COURT: Yeah, okay. I'm sorry.

20 UNIDENTIFIED SPEAKER: No, thank you, sir.

21 THE COURT: That's right. And I guess I'm just going
22 to have let people file their own briefs on these issues. It's
23 just too hard to keep track of them.

24 MR. KAROTKIN: Okay.

25 THE COURT: Yeah, and I just -- I'll take my chances

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1 on it.

2 Look, I'm going to make this argument that I expect
3 counsel to make an effort to coordinate with parties that are
4 similarly situated which is almost always adverse to the debtor
5 here on these issues, and do your best to file -- consolidate
6 the briefs and do not reinvent the wheel by telling me when the
7 Bankruptcy Code was enacted by Congress and when this case was
8 filed. And -- but I'm just not going to -- I can't take the
9 risk of cutting one off when we're dealing with such major
10 issues. So I'll just put some page limits in there, and I'll
11 take it from there.

12 Mr. Karotkin, you're just helping me keep track of the
13 schedule here and we'll take it from there.

14 MR. KAROTKIN: Very well, sir. We'll do that.

15 THE COURT: Okay. And the inverse condemnation. I'm
16 sorry; I forgot about that. We had already talked about that
17 and that's the one that wasn't very controversial.

18 MR. KAROTKIN: You want us to wait for that as well?

19 THE COURT: I guess so.

20 MR. KAROTKIN: Sure.

21 THE COURT: Let's put them all in one place --

22 MR. KAROTKIN: Okay.

23 THE COURT: -- so people tracking the case can know
24 what we're doing.

25 Okay. So what's left is on the plan issue, and Mr.

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1 Stamer made his point, and you and Mr. Bennett want to be
2 heard. And I don't know how I'm going to do anything more than
3 just listen to you today. And there was one gentleman -- I'm
4 trying to keep track of the names -- that wanted -- Mr. -- one
5 second -- Mr. Harris wanted to be heard on a couple of
6 suggested other issues that he has that he thinks are relevant
7 to confirmation. So -- but let's get your response to the time
8 line --

9 MR. KAROTKIN: Okay.

10 THE COURT: -- that Mr. Stamer's arguing, and I'll
11 hear what Mr. Bennett has to say. I really want to get to the
12 main event here on our 9019 motion.

13 MR. KAROTKIN: Well, okay. Thank you, Your Honor.

14 Steven Karotkin, Weil, Gotshal & Manges for the
15 debtors.

16 I think probably the easiest way to summarize Mr.
17 Stamer's argument before the Court a few minutes ago was he
18 said argument number one, which is this case is unique and
19 unprecedented, and I guess because of that for some reason he's
20 asking you, as you noted Your Honor yourself, to ignore the law
21 on what happens with competing plans.

22 He also indicated that he's sure -- he's sure based on
23 discussions with the tort claimants' committee that under their
24 plan it will be successfully accepted notwithstanding --
25 notwithstanding what happens with Judge Donato.

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1 So even if Judge Donato comes in with an estimation of
2 well in excess of thirteen and a half billion on the tort
3 claims, don't worry, no problem, they'll accept the plan and
4 we'll move to confirmation. Of course, there's no evidence of
5 that. There's no evidence of even who sits on the tort
6 claimant's committee that has the ability to deliver any votes
7 or how many people they represent that have actually filed
8 claims in the case. But let's take that -- they're asking you
9 just take that on faith, Your Honor, and accelerate our plan.

10 And effectively, what they're saying, Your Honor, is
11 despite representing to the Court in hearings on September
12 24th, on October 27th that if exclusivity were terminated, the
13 plans would move together. What they now propose, and I think
14 you alluded to it, is they should usurp exclusivity for
15 themselves.

16 Having it modified and terminated was not good enough.
17 Now, their plan should move forward, and again, I think your
18 words, and dump the debtor's plan. That's what they're asking
19 you to do. And I think as you appropriately noted that's not
20 appropriate under Section 1121. It would be unprecedented, and
21 it would completely undermine the debtor's statutory rights.

22 Again, Your Honor, as I mentioned at the outset of the
23 hearing, as we predicted -- as we predicted at the exclusivity
24 hearing, termination of exclusivity has not worked to promote a
25 consensus. As we told you the ad hocs and the TCC have become

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1 polarized entirely and now want to move forward solely with
2 their own plan. That's not the way it should work.

3 And again, Your Honor, after you noted at those
4 hearings that the debtors have made substantial progress with
5 the subrogation settlement and with their plan, the amended
6 plan that they filed to incorporate, Your Honor, what has
7 happened in two weeks? What has happened in two weeks that
8 weren't essentially doing what they're asking you to do to
9 strip the debtors of their rights to pursue their plan
10 consistent with Section 1121 of the Bankruptcy Code, and we
11 submit, Your Honor, nothing has happened.

12 At the exclusivity hearing, Your Honor, the TCC made
13 it very clear, absolutely clear to you that they would only
14 engage in mediation. They were only engaged in mediation if
15 you agreed to terminate exclusivity. Having done that, we say
16 to Your Honor now is the time to promptly appoint a mediator.
17 That is the way to move these cases forward, and let's see if
18 the TCC will live up to its word and its commitment to this
19 Court to mediate. That's the way to get a consensus, not, Your
20 Honor, to let their plan proceed before the debtor's plan in
21 complete contravention of the statute.

22 Letting their plan go first will assure one thing,
23 Your Honor, and that's there will never be a global consensus
24 achieved in these cases. That's for sure.

25 THE COURT: Why do you think that's true? I mean --

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1 MR. KAROTKIN: Because as they've said, they want to
2 move expeditiously with their plan. They're not interested in
3 discussing anything else. Let's move forward, let's confirm
4 our plan, and let's see what happens. The debtor's plan will
5 fail. There's no interest -- let them stand up, Your Honor,
6 and say we are prepared.

7 Have they even put in their plan what they're offering
8 the subrogation claimants? Have they said the nature of that
9 consideration? No.

10 Have they said the nature of the consideration they've
11 proposed to fund the tort claimants' trust with? No. It's
12 going to be a combination of cash and stock.

13 Have they specified what it is? Have they told the
14 subrogation claimants that they will, in their plan, give them
15 eleven billion dollars in cash as we have settled with them?
16 No.

17 Will the tort claimants --

18 THE COURT: Well, let me -- let me interrupt. I have,
19 obviously, been reading a lot of stuff, and I can't absorb all
20 of these new plans, but aren't those the very kind of things
21 that do get sorted out even if there isn't across the board
22 consensus, that those are the kinds of things that get -- is
23 all before you ever even have the confirmation hearing?

24 MR. KAROTKIN: Normally.

25 THE COURT: No, but --

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1 MR. KAROTKIN: But they're saying well, let's go ahead
2 and vote.

3 THE COURT: No.

4 MR. KAROTKIN: Never mind, let's go ahead and vote --

5 THE COURT: No, you're --

6 MR. KAROTKIN: -- on something we don't even know
7 we're voting on.

8 THE COURT: You're moving too fast. Even if you
9 didn't have a plan to offer, their plan isn't ready to be
10 confirmed today because leaving aside disclosures, there may be
11 some open issues that have to be resolved between the creditor
12 groups. Whether it's your plan or their plan that's normal,
13 right? It's normal.

14 MR. KAROTKIN: Normal, and that's, Your Honor, a
15 reason to have mediation start now --

16 THE COURT: No, I understand it.

17 MR. KAROTKIN: -- and not, Your Honor, to let one plan
18 move ahead of another plan.

19 THE COURT: I'm not --

20 MR. KAROTKIN: That's the reason.

21 THE COURT: I've not ignored your request for
22 mediation, nor have I ignored what was said at the prior
23 hearing. I intend to take some action on it in the very near
24 future. That's all I can say at this point.

25 MR. KAROTKIN: Okay. And we would -- as I said, Your

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1 Honor, we would encourage that.

2 So what you have is Mr. Stamer and the ad hoc and the
3 TCC scheduling request is premised entirely on their view that
4 the magnitude of the TCC's constituency claims is huge, and
5 that somehow estimation is not required under their plan. I
6 don't know how they said that, because again in prior hearings
7 before the Court you recognized at a minimum, estimation is
8 necessary to address the absolute priority rule.

9 THE COURT: Now, it might just be terminology, though,
10 right? Whether you call it estimation or valuation, it's still
11 a factual inquiry to determine it, right?

12 MR. KAROTKIN: Yes, a factual --

13 THE COURT: And Mr. Bennett made that point.

14 MR. KAROTKIN: A factual inquiry to determine, Your
15 Honor, exactly what Judge Donato has withdrawn the reference to
16 determine, and what they're saying to you is no, no, no, no
17 more in Judge Donato's court; you do it. You take it away from
18 him and you do it.

19 THE COURT: Well, Mr. Karotkin --

20 MR. KAROTKIN: I don't see how you can do that.

21 THE COURT: -- what we'll --

22 MR. KAROTKIN: I think one thing is absolutely clear
23 to Your Honor is what they're trying to do here is to really
24 avoid a detailed inquiry as to the value of the tort claimant's
25 claims that -- and that's before Judge Donato.

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1 THE COURT: Well, but what would --

2 MR. KAROTKIN: That's what he's going to do.

3 THE COURT: But what I -- tell me this one, just
4 pretending, one of my hypotheticals, that you didn't have a
5 plan on the table at the moment and the TCC and the ad hoc
6 group did. We wouldn't need an estimation in the traditional
7 sense, right.

8 MR. KAROTKIN: Yes, you would.

9 THE COURT: Well -- but no, I mean to figure out the
10 aggregate amount for the victim.

11 MR. KAROTKIN: Why is it any different, Your Honor?

12 THE COURT: Well, that's what I'm asking you.

13 MR. KAROTKIN: It's not any different.

14 THE COURT: What would --

15 MR. KAROTKIN: In order to confirm that plan, an
16 estimation has to be done to determine -- and you said it
17 before, an estimation has to be done to determine whether that
18 plan satisfies the absolute priority rule --

19 THE COURT: But I think --

20 MR. KAROTKIN: -- unless Mr. Bennett's clients are not
21 going to object, and I can assure that's not going to happen.

22 THE COURT: But that's what I'm getting at is, if
23 you -- do you need to have a judicial estimation if the
24 proponent says I'm going to pay this class this amount of
25 money, and that class responds by saying okay, I'll accept

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1 that.

2 MR. KAROTKIN: Yes, you have to determine whether
3 they're getting paid too much.

4 THE COURT: All I'm focusing on is the semantics here.
5 I don't think it's the traditional estimation of the claim to
6 figure out how to distribute to the claim, I think it's the
7 same inquiry, perhaps, to determine whether the equity is
8 unfairly being impaired.

9 MR. KAROTKIN: It's a similar inquiry. It's the
10 inquiry that Judge Donato has withdrawn the reference to do in
11 this case, okay.

12 THE COURT: Well, I know why he's withdrawn the
13 reference. I suggested that he withdraw the reference, but it
14 was to -- it was to do and deal with the personal injury
15 wrongful death claims that I could not do as a matter of law,
16 that's all. But I could do the estimation valuation on a
17 cramdown question, right? Absolute priority question.

18 MR. KAROTKIN: I don't think --

19 THE COURT: You don't think so?

20 MR. KAROTKIN: -- in the context of their plan you can
21 do it where they agreed in their plan to take less if Judge
22 Donato determines it is less. I don't think so, okay?

23 THE COURT: Okay.

24 MR. KAROTKIN: And that's before Judge Donato. Those
25 proceedings are pending before Judge Donato.

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1 THE COURT: No, I understand.

2 MR. KAROTKIN: The Tubbs trial is proceeding.

3 THE COURT: So what would happen -- okay. So -- no, I
4 know that. But -- so Mr. Stamer restated the numbers in his
5 plan for the subro -- the eleven for the subro, and the
6 thirteen and a half, I believe, it was for the --

7 MR. KAROTKIN: Not really, Your Honor, because that's
8 in brackets.

9 THE COURT: But what I'm trying to get to is what
10 would happen in your mind if Judge Donato picked a lower
11 number? What would be the inquiry? In other words, if he
12 determined that -- and no, I'm sorry, I misspoke.

13 If there was a -- if there was not an objection, do
14 you think that the equity has a right to be heard on how much
15 is being paid? And you think that's something that he would
16 have to do rather than --

17 MR. KAROTKIN: At this point, yes, Your Honor.

18 THE COURT: Okay.

19 MR. KAROTKIN: At this point for sure.

20 THE COURT: Okay.

21 MR. KAROTKIN: And as we noted in our reply, at the
22 October 7th hearing, Ms. Dumas clearly indicated that
23 estimation would be required to determine what they would be
24 entitled to under the plan.

25 THE COURT: She did. I recall that.

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1 MR. KAROTKIN: And now, all of a sudden -- all of a
2 sudden because they want to move on the fast track, estimation
3 somehow now isn't required in these cases, and despite the fact
4 that they said, again, before Your Honor -- you asked them,
5 Your Honor, is their plan a backup plan. You asked them that
6 at the October 7th hearing.

7 THE COURT: Well, they said it frequently in the
8 papers.

9 MR. KAROTKIN: And what did they say? No, it's not a
10 backup plan. It should move forward together with the debtor's
11 plan. That's what they said before Your Honor. And now, for
12 some reason, things have changed.

13 What has become, as I said earlier, Your Honor,
14 patently obvious from the request to fast track the plan --
15 their plan -- is to have you do a summary estimation proceeding
16 in connection with the confirmation hearing as you indicated.
17 And in an effort, Your Honor, to avoid a serious inquiry, it's
18 obvious its effort to avoid a serious inquiry as to the value
19 of their claims to be addressed in these cases.

20 And, Your Honor, as you have said, no one should get
21 paid in these cases unless they can demonstrate they're
22 entitled to it. Well, now, Your Honor, the bar date has
23 passed. We know they want to extend the bar date. Information
24 is finally coming in, and people will have an opportunity to
25 evaluate the claims, the magnitude of the claims, information

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1 with respect to the claims, evidence -- evidence about the
2 claims rather than the TCC statement and the ad hoc statement;
3 don't worry, Your Honor, the claims are well in excess of
4 fourteen and a half billion dollars, don't worry about it,
5 don't worry about it, they will accept the plan.

6 No, now, we will have an actual hearing before Judge
7 Donato where he can make that decision. And what they're
8 asking you to do is to have, instead, a very quick process in
9 front of you that is pending before Judge Donato, and we don't,
10 frankly, see how that is either appropriate or how in the face
11 of those proceedings, pending, how you can take that back from
12 Judge Donato.

13 Your Honor, the debtors, unlike the tort committee,
14 and unlike the ad hoc bondholder committee are fiduciaries for
15 all economic stakeholders in these cases.

16 The debtors, as well as Your Honor have an obligation
17 to assure that in the context of a plan in these cases, all
18 creditors and equity holders are treated fairly and equitably,
19 and that's what the estimation proceeding is all about. And
20 when they have been concluded, and Judge Donato has made his
21 decision, and it's clear based on his own schedule, he's very
22 cognizant as you well know --

23 THE COURT: No, I'm aware.

24 MR. KAROTKIN: -- of AB 1054 and the June 30th
25 deadline, very, very cognizant that this -- that these cases

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1 have to be concluded by then, and when he makes his decision,
2 and it will be timely in order -- you can be sure it will be
3 timely to meet that timetable, then both plans can be
4 appropriately amended to address his ruling, and that's what
5 our schedule reflects. That's the way it should be done. As
6 we say, they can be one disclosure statement for both plans,
7 and it can individually describe each plan. And then, when
8 he's finished, the plans which will have actually the
9 treatment, the actual treatment for those voting on the plan
10 can be distributed again, in the customary fashion for people
11 to vote on it.

12 THE COURT: Let me digress slightly. How do I make
13 this all work under your time line without knowing what the
14 CPUC's position is on that?

15 MR. KAROTKIN: The CPUC is -- first of all, Mr.
16 Kornberg can tell you the CPUC's position. I don't want to
17 speak for him. But what I can tell you is that we are meeting
18 with the CPUC on a weekly basis to move our plan forward, and
19 we are very, very comfortable with the fact that we will meet
20 the timetable with the CPUC.

21 THE COURT: Okay. Well, Mr. Kornberg can speak to it
22 if he wants to. For now, I'm probably not going to make any
23 definitive decision about scheduling. I mean, I'm -- because I
24 just have to process all this but go ahead and finish your
25 point.

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1 MR. KAROTKIN: And let me continue to address a couple
2 of other issues that Mr. Stamer raised.

3 And again, as Your Honor -- Your Honor again noted at
4 the prior hearings before the Court, our plan is conditioned on
5 compliance with AB 1054. And as you recognized even this
6 morning several times once the estimation proceedings are
7 concluded, our plan can be amended to address that.

8 And what the ad hoc committee, Your Honor, what the ad
9 hoc committee and the tort committee would have you believe is
10 that if Judge Donato estimates a number over and above the
11 current financing fact and our commitments, our plan blows up.

12 THE COURT: Well, that's what they're --

13 MR. KAROTKIN: It vaporizes.

14 THE COURT: That's their point.

15 MR. KAROTKIN: Okay. They're wrong. They're wrong.
16 We will be in a position to amend the plan as we've indicated
17 to the Court and as Mr. Wells has testified in his deposition,
18 there is ample capacity in both the debt and equity markets to
19 timely fund a plan and meet the requirements of AB 1054.

20 The debtor's plan does not vaporize. That's the
21 mistake and the misconception he's asking you to accept, Your
22 Honor, is that that financing has to come from the debtor's
23 existing equity holders. It doesn't. There is no requirement
24 that it come from the existing equity holders. In fact, the
25 equity commitments that the debtors have already obtained for

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1 the rights offering are not exclusively from the equity
2 holders. There is an array of investors more than willing to
3 invest in this company in order to fund the plan at whatever
4 levels it is.

5 I would note, Your Honor, and again, Mr. Stamer said
6 well, the debtors will have seven days to get new financing.
7 Well, let me tell you, Your Honor, when the debtors revise
8 their plan to increase the distribution by two or three billion
9 dollars, they got equity commitments in two days -- two days.
10 And you know what? They were oversubscribed.

11 And as Mr. Wells' declarations have indicated, and as
12 his deposition testimony has reflected, there is more than
13 sufficient capacity in the market to fund the debtor's plan.
14 Of course, no one's going to give a definitive commitment until
15 they know what that liability is. Nobody is going to pay for
16 those unlimited commitments going forward, but there is more
17 capacity -- the money center banks have told the debtors -- and
18 we filed those letters with the Court -- there is plenty of
19 capacity to fund the plan.

20 I mean, Your Honor, just think about this for a
21 moment. Clearly the Elliott group, the bondholders, are
22 willing to provide that capital, and there's no doubt that
23 others will do it. They're not doing it to protect their
24 position in this case. They're not providing the debtors with
25 financing at attractive rates. It's just, they are here, as

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1 you indicated, to make money, and there are plenty of other
2 financial institutions who are willing to do the same thing.
3 And if Judge Donato comes in with a higher number, those
4 financial institutions will be ready to come forward.

5 The ad hoc bondholders, Your Honor, are not a group of
6 altruistic investors willing to put up money on favorable terms
7 in an effort to save the State of California. Any number of
8 financial institutions have advised the debtors that there is
9 adequate capital necessary and, in fact, Your Honor, on
10 substantially better terms than the terms that are being
11 provided by the ad hoc bondholders. And as we've noted, their
12 interest rates are high, they require reinstatement --

13 THE COURT: Well, listen, now, you're getting down to
14 the details. The question is scheduling. You made your point
15 about I shouldn't put their plan on a fast track. You believe
16 your plan is on an adequate track and let me use the day more
17 efficiently by hearing from Mr. Bennett or others and then move
18 into the other question.

19 I'm not going to make a ruling today. I'm not going
20 to schedule a hearing on their plan today.

21 MR. KAROTKIN: Let me just say one last thing, Your
22 Honor?

23 THE COURT: Sure.

24 MR. KAROTKIN: The schedule we propose works, and it's
25 consistent with how Chapter 11 cases should be administered.

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1 It's consistent with how competing plans should be
2 administered. In fact, as you noted yourself, those plans
3 should be considered together if they meet the requirements for
4 confirmation.

5 THE COURT: But having said that, I want to move on, I
6 want to ask you one more question.

7 Well, never mind. I'll come back to it. There's just
8 too many things going on.

9 MR. KAROTKIN: Okay. Thank you, Your Honor.

10 THE COURT: Mr. Bennett, do you want to be heard or
11 not? I mean, I'm not going to schedule anything today anyway,
12 but I'll be happy to listen to you.

13 MR. BENNETT: Thank you, Your Honor.

14 Very briefly, Your Honor.

15 THE COURT: And you would help me by responding as Mr.
16 Karotkin was doing as why, if it's true, that you disagree with
17 Mr. Stamer that we don't have to have an estimation hearing if
18 their plan goes forward.

19 MR. BENNETT: Okay. Well, so first of all, their plan
20 is premised on a -- to begin with, and I don't know how deeply
21 you dug into the deposition testimony and the factual matter
22 that was behind the paperwork in connection with --

23 THE COURT: Well, some of it. I mean, I --

24 MR. BENNETT: -- exclusivity. But one of the points
25 that we made there, and that would come in a confirmation

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1 hearing as well, and maybe it's a point that has to be
2 litigated ahead of time but -- which maybe I'll write a letter
3 to Mr. Stamer about and see if we can work out a schedule, the
4 so-called agreement, so-called settlement that resulted in a
5 14.5 billion dollar number which, of course, includes the
6 billion for the municipal settlement, so it's sometimes
7 referred to as 13.5 was not an agreement that was reached at
8 arms' length between parties that were genuine adversaries with
9 respect to the issue.

10 At one point, Your Honor focused on that and -- a long
11 time ago, we've never lost focus on that. And frankly, the
12 idea that there's some kind of summary proceeding in a
13 confirmation hearing concerning the allowable amount of those
14 claims on the basis of a not arms' length settlement is an idea
15 that, of course, is supported by no case. Those cases have
16 been cited to you already. But again, if there's formal
17 briefing on that, maybe we should do it, but I'll start by
18 corresponding with Mr. Stamer. We'll do it in writing so there
19 can't be any misunderstandings and see whether we can tee that
20 up for you.

21 But the consequences of that, Your Honor, that if you
22 were to decide that it was somehow different from estimation,
23 our argument would be is it has to be more exacting and more
24 thorough, not rough and dirty like estimations sometimes
25 results. And of course, it would bring the Tubbs trial back to

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1 Your Honor's courtroom.

2 THE COURT: But doesn't it all turn on the maintaining
3 solvency and if some -- if certain circumstances change and we
4 have an insolvency, wouldn't that change the --

5 MR. BENNETT: That would, but you'd have to determine
6 whether the claims are high enough to generate an insolvency.

7 THE COURT: Yeah. No, I understand.

8 MR. BENNETT: And which require --

9 THE COURT: It gets back to the estimation.

10 MR. BENNETT: -- which -- estimation, or if Your Honor
11 decides that you want to take that fall back and have the Tubbs
12 trial here, I'm not sure we would object to that. But it
13 might -- it would have to happen because --

14 THE COURT: I've got plenty of time.

15 MR. BENNETT: Well, it seems like you've set aside the
16 time, and that you have enormous interest in the issues.

17 THE COURT: No, we're not taking the Tubbs trial.

18 MR. BENNETT: But that is where it leads. And so --

19 THE COURT: Yeah, but let's be realistic. I mean,
20 look outside the window. If we have another catastrophic fire
21 post-petition, that itself could trigger the issue, right?

22 MR. BENNETT: Your Honor, one of the -- it could, or
23 it couldn't. Here's one of the parts about this case that
24 has -- we had this long three-hour discussion this morning --
25 almost three hour, it hasn't been three hours yet, but soon to

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1 be three-hour discussion, and what struck me about it is is
2 that much of it was about pronouncements of facts that we're
3 almost in a position to start proving with evidence, and
4 efforts to somehow evade the actual presentation of facts.

5 We need facts in this case. It's not often mentioned,
6 but we get it. It's true that there are victims that suffered
7 in the fires, and that they suffered a lot. They've also been
8 paid more than fifteen billion dollars already. Not every
9 victim. And so to say that there's 14.5 billion dollars more
10 is talking about 30 billion dollars in losses. That's an
11 enormous number. And the parties are entitled to prove two
12 things, whether or not those numbers are real -- what the real
13 numbers are, and two, whether or not it is true that the
14 allegations that PG&E is responsible for all the fires are true
15 which the company doesn't believe is true and, frankly, my
16 clients don't believe is true.

17 And so the effort to accelerate, I see it -- I can't
18 crawl into Mr. Stamer's head and know for sure, or his client's
19 head -- I see it as an effort to evade factual development, to
20 kind of rush to a judgment based upon a lot of assumptions that
21 aren't true.

22 Specific to some of his -- I'm going to confine to his
23 specific assertions which, frankly, are factual assertions in
24 many ways which Your Honor's not supposed to credit, and no one
25 should credit.

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1 So fact assertion number one was that the financing
2 behind the debtors would disappear. Well, of course, there's
3 no -- that's a factual assertion. He doesn't have the faintest
4 idea one way or another. The truth is as Mr. Karotkin pointed
5 out, it won't. They were never dependent --

6 THE COURT: Well, that's a fact too.

7 MR. BENNETT: Fine.

8 THE COURT: No. No, no. But look --

9 MR. BENNETT: We --

10 THE COURT: -- you and I both know --

11 MR. BENNETT: We are ready to prove it.

12 THE COURT: That's right. And you and I both know
13 that if it's time for anybody, whether it be their side or your
14 side, to confirm a plan, they got to prove up feasibility.

15 MR. BENNETT: Exactly.

16 THE COURT: So --

17 MR. BENNETT: Exactly right.

18 THE COURT: So that's -- and that has to happen.

19 MR. BENNETT: But I want to say one more thing to just
20 remind the Court that when they say that there's something
21 wrong with our financing, remember the financing documents that
22 exist behind the debtor's plan were negotiated at arms' length
23 with the debtors. There are no sole discretion provisions.
24 I'm going to paraphrase like Adam Schiff did, but it's an
25 accurate paraphrase, their document says we'll put up financing

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1 if in our discretion we want to. That's what theirs really
2 says, and if Your Honor wants me to take you through it and
3 show you the places --

4 THE COURT: No, no, I've looked at the documents
5 enough to know --

6 MR. BENNETT: Okay.

7 THE COURT: -- that there's some outs there, but
8 again, so what. They're --

9 MR. BENNETT: Okay. But then they shouldn't be
10 criticizing what the financing that the debtors can deliver --

11 THE COURT: But you again --

12 MR. BENNETT: -- when they deliver better financing.

13 THE COURT: -- you and I both know the answer to the
14 following question. If Mr. Stamer's plan is up for
15 confirmation, aren't you going to raise an objection and make
16 them prove feasibility?

17 MR. BENNETT: We absolutely are.

18 THE COURT: Okay.

19 MR. BENNETT: And they're going to do the same with
20 ours and that's when it happens.

21 THE COURT: Okay.

22 MR. BENNETT: Okay.

23 THE COURT: All right.

24 MR. BENNETT: I want to also point out that there's
25 other -- Mr. Stamer would like to say the only issue here is

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1 the size of the claims, and of course that's not even close to
2 right.

3 There's another issue which he wants to blow away too
4 which is can reinstatement result in overpayment particularly
5 where the plan has been engineered to turn all the unsecured
6 debt into secured debt. That's another great discrete issue
7 that Your Honor might want to consider separately. I'll send
8 Mr. Stamer a letter, but that's a fundamental confirmation
9 problem with their plan, and he sized it. I don't have to size
10 it. It's a five billion dollar issue. That's it.

11 THE COURT: That reinstating and over secure overpays?

12 MR. BENNETT: Yes.

13 THE COURT: Okay.

14 MR. BENNETT: When reinstating loss making secured is
15 overpayment that prohibited under the Bankruptcy Code.
16 Valuation.

17 One of the absolutely tenants of everything a debtor
18 has done, and that my clients buy into for obvious reasons is
19 that if there's going to be any money raised pursuant to any
20 plan it should be raised at the highest possible prices, or
21 alternatively the lowest possible capital cost. That should be
22 an absolute fundamental, that we're looking to -- that no
23 matter what the claims are, we're in the business of value
24 maximization.

25 So one of the things that would have to be proved

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1 under their plan which Mr. Karotkin just suggested cannot be
2 proved, and which is, of course, a factual issue as to which
3 Your Honor would have to hear evidence and would be contested
4 is whether or not the financing that if it became real from the
5 bondholders was, in fact, financing, that was the highest and
6 best chain obtainable, and that realized the debtor's true
7 valuation. That's not a little issue; it's a big issue.

8 Another issue --

9 THE COURT: That's just a restatement of the whole
10 question and they -- are they taking it out of equity
11 improperly?

12 MR. BENNETT: Exactly, Your Honor.

13 THE COURT: However you label it.

14 MR. BENNETT: Okay. There's another issue too which
15 is -- and this comes out of -- Your Honor knows that this is a
16 big deal in single asset real property cases, but it's also a
17 big deal in this case. Who gets to make new investments?

18 If a new investment is required of cash and the terms
19 are the same, would it go to impaired creditors who want the
20 opportunity to continue to maintain their investment or
21 unimpaired creditors?

22 When is the last time we were in bankruptcy court
23 where an unimpaired creditor decided to take upon themselves to
24 take an investment opportunity for themselves when there were
25 other impaired creditors that might want the same opportunity?

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1 There are multiple variations on this particular question. Mr.
2 Harris is here to address a slightly different one. But this
3 is another major issue with their plan which Mr. Stamer, of
4 course, never talks about.

5 THE COURT: But again, you're acting like Mr. Stamer
6 thinks that I should confirm his plan, and I think he has
7 conceded that as long as there's this other plan, and maybe
8 concede's a strong word, I certainly stated even if he had his
9 plan all set to go until the debtor is out of luck or I'm
10 prepared to say your time's up, debtor, we have to get to that
11 point, don't we?

12 MR. BENNETT: Yes. Absolutely.

13 THE COURT: And so we're -- so no matter what, we're
14 still in the running.

15 MR. BENNETT: I make these points primarily because
16 every time he stood up he says it's really simple, all we have
17 is one question; the debtor's plan is more complicated. The
18 fact is that's just not true.

19 And, frankly, if Your Honor is ever again interested
20 in addressing the schedule, what I would ask you to do is set a
21 briefing schedule so both parties can lay out the confirmation
22 issues, talk about what kind of process is really entailed.

23 THE COURT: Well, have we missed some? I mean --

24 MR. BENNETT: I've cut out the small ones, Your Honor,
25 to focus on the hard -- what I regard as the hard ones.

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1 THE COURT: But I've been -- the invitation is there,
2 not, perhaps, today, but to get the checklist of things that
3 could be dealt with properly and sequentially out of order --
4 out of the traditional order.

5 MR. BENNETT: And I'm going to take that invitation.

6 THE COURT: Okay.

7 MR. BENNETT: And I think the right way to do it as I
8 said before, we'll write a letter to Mr. Stamer --

9 THE COURT: Good.

10 MR. BENNETT: -- and we'll sort it out.

11 Now, I want to talk about some law.

12 We've been fencing around it --

13 THE COURT: Well, I'm going to stop you only by saying
14 I welcome you're telling me about the law, but I'm not going to
15 do anything today and -- except try to get to the 9019 motion.

16 MR. BENNETT: I understand that, Your Honor.

17 THE COURT: Okay.

18 MR. BENNETT: But again, look, if status conferences
19 get more bounded and other people don't blast into other
20 irrelevant categories I don't feel it necessary to respond but
21 it happens, so I feel it's required to respond.

22 Nobody managed to mention 1129(c). And 1129(c), of
23 course, is the only provision equity in the statute that
24 addresses of what the Court's supposed to do with multiple
25 plans. And I think you've paraphrased it --

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1 THE COURT: I mentioned it before.

2 MR. BENNETT: -- accurately -- yes, you paraphrased it
3 accurately which is when there are multiple plans you're
4 supposed -- your first job is to figure out how many are
5 confirmable, and then after you've decided as to however
6 many -- okay, here, we're talking about two -- then there's the
7 issue of preferences expressed through the voting.

8 THE COURT: Right.

9 MR. BENNETT: And that could get very complicated
10 here.

11 THE COURT: And then the statute tells me what to do
12 if they're both accepted.

13 MR. BENNETT: Exactly. But you can't read 1129(c) to
14 say oh, but one plan can race past the other because of a
15 procedural advantage. That's not what it says. That's not how
16 it would be interpreted, I don't think, in any court. And so
17 it provides a very strong guide to keeping everything on the
18 same track which as Mr. Karotkin correctly stated was -- and I
19 think -- don't think it was just once, was what was advertised
20 when Your Honor was urged to terminate exclusivity.

21 THE COURT: Well, I didn't give you any reason to
22 believe that I'm going to depart from that, am I? I mean, I
23 might have --

24 MR. BENNETT: No, you --

25 THE COURT: -- I might have disappointed you by

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1 breaking exclusivity, but I haven't said that the debtor isn't
2 still in the game with this plan.

3 MR. BENNETT: Your Honor, I'm just responding to --

4 THE COURT: Okay.

5 MR. BENNETT: -- to something that was urged upon you
6 with a great deal of spirit and, frankly, volume a little bit
7 earlier today.

8 THE COURT: Now, I ask that we calm this down. Okay.
9 I'm going to conclude the discussion of plan scheduling,
10 because I told you I'm not going to --

11 MS. DUMAS: No, Your Honor. Very briefly.

12 THE COURT: Ms. Dumas.

13 MR. FELDMAN: Your Honor, I need thirty seconds,
14 because there's one issue that nobody's raised and I think it's
15 relative, Your Honor.

16 THE COURT: You go first, sir. Thirty seconds. And
17 then Ms. Dumas, and then Mr. Harris, and then we're going to go
18 to the 510 -- I mean the 9019 --

19 MR. FELDMAN: For the record, Your Honor, Matthew
20 Feldman on behalf of the ad committee of subrogation holders.

21 THE COURT: I thought you were here, Mr. Feldman.

22 MR. FELDMAN: Your Honor, obviously, if the Court had
23 done today in a different order, I might not need to rise, but
24 if the Court is not inclined to approve the RSA and the made
25 whole -- I'm sorry, and the settlement, the 9019 settlement

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1 with my clients, we absolutely will need estimation and we will
2 roll right into estimation --

3 THE COURT: Well, I didn't say --

4 MR. FELDMAN: -- as is contemplated.

5 THE COURT: I mean, my choices aren't just to approve
6 it or disapprove it, are they?

7 MR. FELDMAN: I --

8 THE COURT: I mean, here, in the last twenty-four
9 hours, I got two letters from you and a supplement and a
10 thirty-five page brief, and it might well be that it needs to
11 be tied up into one concise document.

12 MR. FELDMAN: Understood, Your Honor.

13 THE COURT: Okay.

14 MR. FELDMAN: But as you go back and think about
15 schedule, the idea that no one would have to estimate as
16 posited by Mr. Stamer may turn out to not be correct.

17 THE COURT: Okay.

18 MR. FELDMAN: This is not just about the IPs. Thank
19 you.

20 THE COURT: Got it. Thank you.

21 Ms. Dumas.

22 MS. DUMAS: Thank you, Your Honor. Very briefly.

23 Many, many excellent points with respect to the
24 Bankruptcy Code have been made and how the cases should proceed
25 with which we concur.

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1 I'm going to make one practical observation, only
2 because the constituent that we represent is the involuntary
3 creditors, and to explain to the Court the practical reasons
4 why we endorsed a fast-track approach, whether it's the
5 bondholder plan, which happens to be the only fast-track
6 approach available, or a different plan, and that is the
7 following: we have thousands of constituents, and we
8 understand that there are a range of outcomes, litigation
9 outcomes. So for example, if Judge Donato were to give an
10 estimate of tort claims of, say -- I'm just going to use, by
11 example, twenty-five billion -- then we, the TCC, most likely
12 will not be able to convince all those people who are very
13 energetic about their rights, plaintiffs, to not force breaking
14 solvency because --

15 THE COURT: To not do what?

16 MS. DUMAS: Not force breaking solvency because if
17 Judge Donato's estimate --

18 THE COURT: I know.

19 MS. DUMAS: I'm going to walk through this. I may say
20 it wrong, but --

21 THE COURT: I'm having a little trouble following your
22 theory, but --

23 MS. DUMAS: Yeah, so --

24 THE COURT: Okay.

25 MS. DUMAS: So right now, we think the break point of

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1 solvency is this 25.5 billion compromise; that's why we called
2 it a compromise. 25.5 meaning the amount that's available for
3 tort claimants. So 11 billion to subro, 1 billion to the
4 settling PEs, 13.5 billion to victims and the state and federal
5 agencies which, by the way, they just filed 6-1/2 billion, so
6 of the 13.5, the United States and the state just filed claims
7 for 6.5 billion of that. So the hurdle isn't quite so high.

8 But anyway, to my point, because the TCC is concerned
9 about both ranges. To my point, let's just say hypothetically
10 that it's twenty-five billion that Judge Donato says. I
11 estimate for victim claims because I'm a believer in punitive
12 damages, or I'm a believer in the emotional distress claims;
13 for whatever reason. There are many of these involuntary
14 creditors who will say, I'm not going to stand back and take
15 the TCC's recommendation that I let everybody else get paid in
16 full. We're going to change the case entirely. We're going to
17 put our number in there and everybody else is going to have to
18 take their sixty cents on the dollar which will then trigger
19 the domino effect of every single affected creditor in the
20 case.

21 THE COURT: I'm not following you. I mean, how does
22 this happen? Meaning they vote against the plan? Vote against
23 your plan? I mean, I guess that's --

24 MS. DUMAS: Yes, exactly.

25 THE COURT: I'm trying to describe --

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1 MS. DUMAS: Yeah, sure. Yes.

2 THE COURT: -- figure out where you're going with
3 this.

4 MS. DUMAS: They -- yes. They vote against -- if
5 there's a high estimation --

6 THE COURT: By what the majority is.

7 MS. DUMAS: -- they vote against the plan.

8 THE COURT: Okay.

9 MS. DUMAS: That's right. On the other side -- and
10 demand, because --

11 THE COURT: Well, excuse me. If they vote against the
12 plan then, unless there's some other theory, that plan is dead,
13 right?

14 MS. DUMAS: Well, yes. And here's the thing, though.
15 This is a dictate of -- I could be speaking about a bondholder
16 plan or a debtor plan right now.

17 THE COURT: Right.

18 MS. DUMAS: What I'm trying to talk about is the
19 practicalities of compromise. So I'm talking about the high
20 side --

21 THE COURT: Okay.

22 MS. DUMAS: -- that a number big enough to render the
23 debtor insolvent, that makes this a three- to five-year case,
24 not a seventeen-month case. Just in our view. We're trying to
25 avoid that by confining ourselves --

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1 THE COURT: No, I mean, we all are.

2 MS. DUMAS: -- to the distributed value.

3 THE COURT: I mean, I think we've been --

4 MS. DUMAS: Yeah.

5 THE COURT: -- talking about that for ten months.

6 MS. DUMAS: Right. Absolutely. But so let me -- this
7 is why we're talking about -- we're being practical; we're
8 trying to talk about compromise. Let's go to the other end.

9 I think what the debtors and the equity security
10 holders are validly relying on as a big swing in the numbers is
11 the Tubbs trial. The Tubbs trial is a large component of all
12 tort claims.

13 So I'm going to do another hypothetical, and Mr.
14 Baghdadi (phonetic) over here is going to shriek, but I'm going
15 to do a hypothetical that the plaintiffs in Tubbs get defended,
16 right, so that there are no victim claims allowable whose
17 injuries come out of Tubbs. In that scenario --

18 THE COURT: And no insurance company claims, either.
19 Right?

20 MS. DUMAS: Which brings me back to the point, is how
21 can you approve the eleven billion right now because forty
22 percent of all insurance claims are derived from Tubbs. And
23 I'm not trying to pick a fight with anybody right now, but it
24 looks --

25 THE COURT: Well, it sounds like you're arguing

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1 against the motion.

2 MS. DUMAS: No, no, no. I'm just doing hypotheticals.
3 But there may be a hypothetical where if Tubbs goes to a
4 defense on all the claims, then there will be people who
5 validly raise the point that the insurance companies are then
6 getting 105 cents on the dollar on their payments because of
7 the amount of the eleven billion. So this is -- again, I'm
8 just telling you what we're trying to do to hold the center.

9 To use, holding the center of a compromise of 25.5
10 billion going to all tort claimants is really -- the debtors
11 could do the same thing today. They have chosen not to for
12 their own reason; that's totally fine. But the point is that
13 it's more risky for this case not to meet AB 1054, in our view,
14 if Tubbs goes and if Judge Donato goes. And we view it as a --
15 we literally view it as a compromise, not a money-grab.

16 THE COURT: Well, Ms. Dumas, I'm having trouble only
17 not understanding --

18 MS. DUMAS: Yeah.

19 THE COURT: -- your words, but where you're going with
20 the argument now. I thought -- I'm just talking about
21 scheduling.

22 MS. DUMAS: Yes. You're talking about scheduling --

23 THE COURT: So what do you -- what it is it you want?

24 MS. DUMAS: -- and I felt the need --

25 THE COURT: What do you want me to do?

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1 MS. DUMAS: So I felt --

2 THE COURT: I mean, it sound it sounds like you're
3 arguing about why I should deny the 9019 motion, which is --
4 you're entitled.

5 MS. DUMAS: Oh, yeah, we --

6 THE COURT: You've made that in your papers, and --

7 MS. DUMAS: Yeah.

8 THE COURT: But what --

9 MS. DUMAS: No, that's Mr. Julian's terrain.

10 THE COURT: So what --

11 MS. DUMAS: What I'm saying is, I'm describing for the
12 Court what I think is the very valid reason in a sui generis
13 case why the tort committee signed on to a fast-track
14 compromise.

15 THE COURT: I didn't question it. But that doesn't
16 mean I'm going to have a confirmation hearing next week,
17 either, for all the reasons you heard. But -- so I mean --

18 MS. DUMAS: So --

19 THE COURT: -- is this your pitch to have me schedule
20 the confirmation hearing on your plan? I'm not prepared to do
21 that.

22 MS. DUMAS: I --

23 THE COURT: I'm not saying I won't do something. I
24 haven't been able to process it all.

25 MS. DUMAS: Yeah. No, I understand that --

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1 THE COURT: This is fast-moving for me as well as for
2 all of you.

3 MS. DUMAS: Yeah.

4 THE COURT: So --

5 MS. DUMAS: And we do understand that the -- we do
6 understand the Bankruptcy Code.

7 THE COURT: Well, I know you do.

8 MS. DUMAS: We do understand parallel tracking of
9 plans that are both confirmable. But the trouble we have, the
10 real problem we have, which is an actual meaningful problem, is
11 this 8.4 cap, which is actually a 6.9 billion dollar cap. And
12 for the debtors to -- again, for the debtors to stand up and
13 say, you have to be capped at 8.4 billion when the public
14 entities just filed 6-1/2 billion --

15 THE COURT: I don't know what to make -- why are you
16 saying this? We are not here deciding to confirm or deny
17 confirmation of the debtors' plan, and -- any more than I'm
18 here to confirm or deny confirmation of the plan that you
19 support. So I know these things, but therefore, what do you
20 want me to do today?

21 MS. DUMAS: Well --

22 THE COURT: I know you feel strongly about the cap.
23 You also told me at the last hearing, if they went up six
24 billion, you would be happy as a clam.

25 MS. DUMAS: Well, we --

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1 THE COURT: So I know that.

2 MS. DUMAS: Yeah, we also --

3 THE COURT: Okay?

4 MS. DUMAS: -- I mean, we also -- again, we're not
5 trying to be unfair. We're not trying to deprive people of
6 rights. We are trying to keep this, in our view, this whole
7 bankruptcy case, on a track that it even can get confirmed.

8 THE COURT: And Ms. Dumas, if I thought that by
9 delaying consideration of your side's plan would imperil it, I
10 perhaps would --

11 MS. DUMAS: Yeah.

12 THE COURT: -- think differently. But I believe that
13 your plan, and Mr. Stamer's summary of it, is a plan that he
14 wants confirmed, but he isn't saying if I don't confirm it by
15 next week he's walking. And if I don't confirm it until next
16 spring, he's still going to be happy if his plan gets -- his
17 clients' plans get confirmed.

18 MS. DUMAS: Yeah. I --

19 THE COURT: So all we're talking about is scheduling.
20 And at the moment there are -- and you personally, and your
21 clients, were very influential in persuading me to change my
22 position and allow the plan. But that doesn't mean I'm dumping
23 the debtors' plan in the trash can, and it does get back to the
24 point that I've tried to stick with since then, that there are
25 two plans, that neither one is perfect yet and neither one is

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1 confirmable yet, but both are potentially confirmable. And
2 yes, there are all these unknowns: there's Judge Donato's
3 ruling, and the Tubbs trial, and these legal issues maybe are
4 not plan breakers, but they're plan influencers. And we're
5 going to get there --

6 MS. DUMAS: Um-hum.

7 THE COURT: -- in my opinion; I hope.

8 MS. DUMAS: Yeah.

9 THE COURT: And I would be disappointed, as I'm sure
10 your clients and you would be devastated, if there's no plan.
11 But at the moment, I'm still of the view that there are two
12 plans to keep on --

13 MS. DUMAS: Yeah.

14 THE COURT: -- a track. And we can debate, and will
15 debate at a later point, how that track should be played out.
16 But let's leave it at that --

17 MS. DUMAS: Yeah.

18 THE COURT: -- for now because I'm telling you, I'm
19 not going to make a ruling on the scheduling today.

20 MS. DUMAS: Yeah. Understood, Your Honor.

21 THE COURT: Okay.

22 MS. DUMAS: I think you -- I'll just boil down my
23 final comment, which is really -- you stated it much better
24 than I did. I think where I'm coming down is that the TCC,
25 having the most exposure to this unruly and large class of

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1 claimants, the TCC actually believes that it may imperil the
2 plan confirmation process if we have to go to the Tubbs trial,
3 if we have to go to confirmation. Because either way, it's
4 going to be very difficult to -- unless there is a compromise.
5 And I've said this to everybody in the room. I mean, it's --
6 but unless there's a compromise, we're not going to be able to
7 get a plan. We're not going to be able to get a plan confirmed
8 politically over the objection of the tort claimants, and the
9 TCC isn't going to be able to persuade the tort claimants that
10 a compromise works if Judge Donato goes with Mr. Julian, or
11 vice versa. Or vice versa, that's my point.

12 THE COURT: Okay.

13 MS. DUMAS: Thank you, Your Honor.

14 THE COURT: Thanks.

15 Mr. Harris? And then I'm going to -- you're the last
16 speaker on the plan issue, and then we're going to talk about
17 the 9019 motion.

18 MR. HARRIS: Thank you, Your Honor. Adam Harris from
19 Schulte Roth & Zabel on behalf of PointState Capital,
20 Centerbridge Partners, Anchorage Capital Group, Silver Point,
21 and Fidelity Management and Research.

22 Your Honor, I don't want to unnecessarily prolong this
23 morning's discussion, but Your Honor did ask a question to Mr.
24 Karotkin first and then several others who followed him, I
25 believe it was two and a half hours ago.

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1 THE COURT: Whatever.

2 MR. HARRIS: Whatever.

3 THE COURT: Seemed like just moments ago, right?

4 MR. HARRIS: Exactly. About the context of trying to
5 identify those predicate issues that will bear on confirmation
6 and whether there were others beyond the post-petition
7 interests and the make whole --

8 THE COURT: And Mr. Bennett --

9 MR. HARRIS: -- and Mr. Bennett.

10 THE COURT: -- is going to suggest some, too.

11 MR. HARRIS: And Mr. Bennett now has raised a couple.
12 And I'm here to say that there are, in our view, at least two
13 others that should be addressed.

14 THE COURT: Okay.

15 MR. HARRIS: And like Mr. Bennett, Your Honor, I will
16 deal with Mr. Stamer through correspondence to see if we can
17 come up with a timetable --

18 THE COURT: Do you want to give me a clue, or the
19 top --

20 MR. HARRIS: Well, I'm happy to preview them for Your
21 Honor. The first is an issue under the TCC ad hoc plan that
22 comes up under Section 1123(a)(4) of the Bankruptcy Code, Your
23 Honor, which requires that creditors in the same class receive
24 similar treatment --

25 THE COURT: Um-hum.

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1 MR. HARRIS: -- with respect to their claims.

2 As Your Honor knows, then, under the terms of the TCC
3 ad hoc committee plan, in addition to getting the treatment
4 afforded to utility bond holders in Class 5b and 6b (phonetic),
5 the commitment parties and certain members of the ad hoc
6 committee will also have the sole and exclusive opportunity to
7 participate in the new holdco equity investment, the new
8 unsecured bond investment, to backstop the new utility secured
9 bonds, as well as to earn 670 million dollars of commitment
10 fees. Your Honor, our view is those are distributions on
11 account of their claims, that they put them in a different
12 treatment category than everybody else, that they were in the
13 room and uniquely positioned because of their creditor status
14 to effectively negotiate, to take that for themselves, and that
15 that constitutes a clear violation of 1123(a)(4).

16 Now, that argument, Your Honor, I'm sure will be met
17 by Mr. Stamer telling me that these particular groups of
18 creditors should be viewed no differently than any other third-
19 party investor who is willing to make financing available to
20 the company in order to facilitate an exit. I would suggest to
21 Your Honor that the terms of the plan, the terms of the
22 financing letters, the conditions of the plan that require that
23 this financing be accepted all would speak differently to what
24 the outcome should be and that there is a -- as the Court would
25 say, a causal relationship between the opportunities afforded

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1 to them, and then exclusively in relation to their existing
2 bondholders.

3 THE COURT: Okay. That's a preview, right?

4 MR. HARRIS: Right.

5 THE COURT: And it seems to me that if you can work
6 out a stipulation to tee it up, it sounds like a legal
7 question.

8 MR. HARRIS: Right.

9 THE COURT: Okay.

10 MR. HARRIS: And part of it is a factual question,
11 Your Honor, with respect to the issue of causal relationship,
12 but we'll address that with Mr. Stamer and see if we can come
13 up with a schedule for addressing that.

14 THE COURT: Okay. And the second one?

15 MR. HARRIS: The second part, Your Honor, actually
16 arises based upon, in my view, the response that I think we're
17 likely to get to this which, as I said, is we should be treated
18 and viewed as traditional third-party financing sources here,
19 typical of what you would see in any other case. And Your
20 Honor, assuming we could suspend reality for a second and
21 actually buy into that, let's take that on its face. Let's say
22 that they should be viewed as actual third parties.

23 Well, in what case, Your Honor, has a actual third-
24 party financing source ever been able to walk into a debtor and
25 say, here are the terms of my financing, and take it, and you

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1 have no opportunity to go out and test it in the capital
2 markets to determine whether it is, in fact, the best
3 opportunity, best terms available for the circumstances of your
4 particular plan. There is no market test capabilities.
5 They're not backstop commitments. These are absolute, mandated
6 investments that the plan, as I said, requires be in place and
7 consummated in order for their plan to go effective.

8 There's no fiduciary out which would be typical in any
9 circumstance like this if somebody were simply to come across
10 the transom and offer the company financing the funds for the
11 same amount of money on better terms. There's no opportunity.
12 Honestly, Your Honor, it's because there's no fiduciary on
13 their side in this particular plan looking out for the
14 interests of the estate and other creditors, which is what left
15 us in the position we're in right now.

16 And it requires, Your Honor, that Your Honor approve
17 all of this. So as it relates to that aspect of it, not only
18 do we have an 1123(a)(4) problem; we think there's a
19 significant problem under 1129(a)(3) and 363 of the Code
20 because when it comes before Your Honor and they have to put on
21 a case in proof to provide Your Honor with the basis upon which
22 you're going to approve all of this, somebody's going to have
23 to get up and say this is an exercise of reasonable business
24 judgment; this was designed in order to maximize the value of
25 the estate for the benefit of all parties-in-interest. And we

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1 think the factual predicate for that is going to be difficult
2 if not impossible to make in light of the fact that there's
3 been no market test, and particularly in light of the evidence
4 which we think the debtors have alluded to this morning
5 regarding the capital markets being open and available on terms
6 materially better.

7 THE COURT: Well, but doesn't that -- doesn't that
8 self-correct if there are competing plans and they're up for
9 confirmation?

10 MR. HARRIS: If there are competing plans.

11 THE COURT: Well, there are competing plans at the
12 moment.

13 MR. HARRIS: Well, but --

14 THE COURT: They're not ready to go yet.

15 MR. HARRIS: So let me just --

16 THE COURT: Aren't they -- well.

17 MR. HARRIS: Yeah, I agree. It may be self-
18 correcting, Your Honor. And obviously, if the debtors' plan
19 goes forward, these issues may be -- would be, moot. But the
20 issue really came up, Your Honor, in light of the decision to
21 terminate exclusivity. When --

22 THE COURT: Well, of course. That goes without
23 saying.

24 MR. HARRIS: Well, I know, but then my clients, who
25 honestly have written commitment letters to support the

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1 debtors' plan and underwrite that, have now been put into a
2 position where they have to evaluate where they stand vis-à-vis
3 other constituencies in the event that the TCC ad hoc committee
4 plan gets legs, goes forward. Were Your Honor to give it
5 primacy, with respect to -- and I'm not saying you are or
6 aren't, but these are the things that have now come to light
7 that we've been forced to kind of grapple with. And again,
8 they're not up for decision today.

9 THE COURT: Well, see, you're using words like "forced
10 to". I mean, isn't that the natural consequence if -- I mean,
11 you can say, well, the judge screwed up by breaking
12 exclusivity; well, okay. But there is a competing plan, and
13 that plan is here with all its warts. And if you have an
14 attack and can show it's uncons -- wrong word, unconfirmable.
15 Unconstitutional probably would work, too, but unconfirmable --
16 then you will get rid of that plan, right? I guess I'm saying,
17 therefore, what am I supposed to do now?

18 MR. HARRIS: Yeah.

19 THE COURT: To the extent you identify an issue,
20 that's helpful. But yeah.

21 MR. HARRIS: Yeah. I think, Your Honor, I'm simply
22 reacting to your question earlier on. And I guess there are
23 circumstances, hypotheticals that various people have come up
24 with, under which the plan that would be going to confirmation
25 or for Your Honor's consideration, in terms of two confirmable

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1 plans, would be the -- let me back up.

2 There are circumstances one could hypothesize under
3 which the TCC ad hoc committee plan is the only plan going
4 forward.

5 THE COURT: Correct.

6 MR. HARRIS: Okay.

7 THE COURT: And if that was --

8 MR. HARRIS: And if that were to occur, the issues
9 that I'm talking about right now would be front and center, in
10 terms of its confirmability.

11 THE COURT: Right.

12 MR. HARRIS: So when you asked the question earlier on
13 this morning -- are there issues that we should be addressing
14 in advance of a confirmation hearing that could be resolved and
15 allow us to get to a confirmation hearing more easily, should
16 that occur -- these are two that my clients believe should be
17 on that list.

18 THE COURT: No, I'm -- this is another way of saying
19 I'm glad you identified them. And to me, it is -- we're
20 stretching out the confirmation on a linear way to address and
21 vet and test, at least from my point of view, the validity or
22 invalidity of these provisions. And so you've identified a
23 couple, and that's great.

24 MR. HARRIS: Great.

25 THE COURT: I mean, I hope you do it. And to the

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1 extent that it can lend itself to a discrete legal challenge,
2 that's fine. If we have to wait, and it becomes part of the
3 confirmation objection that might be filed in a more
4 traditional schedule, that would be fine, too.

5 So I will leave it at encouraging you to see if you
6 can get a consensus on how to tee it up ahead of time, okay?

7 MR. HARRIS: We're happy to do that, Your Honor.

8 THE COURT: Okay.

9 MR. HARRIS: Thank you very much for the time.

10 THE COURT: Okay. Mr. Stamer, I --

11 MR. STAMER: Really short, Your Honor.

12 THE COURT: We'll never get to the motion if you keep
13 coming back.

14 MR. STAMER: I think this is actually probably a
15 pretty good segue to the motion, if you just give me a couple
16 of minutes. Again, for the record, Mike Stamer --

17 THE COURT: Yes, sir.

18 MR. STAMER: -- from Akin Gump, on behalf of the ad
19 hoc noteholder committee.

20 I'll start with where Mr. Harris ended. Our plan's
21 not perfect, and we're happy to talk to people and the Court as
22 we move forward to try to resolve open issues. But I think you
23 need to understand who Mr. Harris represents. He represents
24 four institutions, all of whom sit on Mr. Bennett's committee.

25 THE COURT: Okay.

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1 MR. STAMER: So he talks about being a splinter
2 bondholder group; they're actually on the equity committee and
3 they have written commitments to fund the equity plan. So what
4 they're looking to do -- this is the ultimate hedge. And it's
5 also -- it's offensive, as well because they want to be able to
6 participate in our plan if they lose.

7 And oh, by the way, they're making the argument that
8 the distributions are being made on account of our claims?
9 That's not -- they're not making that as a bondholder. Because
10 if that's the case, we're getting paid more than in full. The
11 financing we're providing, Your Honor, is new money, not on
12 account of our claims. And if we made it available to all
13 unsecured creditors or all bondholders, they would argue --
14 these same clients in Mr. Bennett's group, would argue, you're
15 getting paid more than hundred cents.

16 THE COURT: But now you're arguing the merits.

17 MR. STAMER: I'm sorry. Okay.

18 THE COURT: That's the merits.

19 MR. STAMER: You're right. You're right.

20 THE COURT: Okay.

21 MR. STAMER: So the only other issue is, it relates to
22 Mr. Karotkin's very strong statement that you can't take
23 estimation away. You have to estimate. You have to estimate.

24 We completely disagree. We think, actually, under
25 502(c) you no longer have to estimate the claims because under

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1 our plan, the liquidation of these claims will not unduly delay
2 these proceedings. That's number one.

3 And number two, Mr. Feldman got up and said, if you
4 don't approve my settlement, then you need to estimate me. So
5 on the one hand, they're saying you have to estimate the tort
6 claims, and on -- the next thing on the calendar, they are not
7 estimating the subrogation claims and they're settling, which
8 is exactly what we're doing with respect to the torts.

9 So Your Honor, I'm --

10 THE COURT: But you don't disagree, do you? The
11 valuation issue, whether we call it estimation or valuation,
12 it's the same inquiry, isn't it?

13 MR. STAMER: It is.

14 THE COURT: Yeah.

15 MR. STAMER: The answer is, it's a different name.
16 From your perspective, you do not need to do a bottoms up, full
17 analysis, for purposes --

18 THE COURT: No, I understand.

19 MR. STAMER: -- of capping individual plaintiffs'
20 claims. You need to make a decision that the settlement is
21 reasonable and that's it's fair and equitable, that it doesn't
22 overpay the torts. And we can talk about the best way and the
23 most efficient way to do that, but the reference to withdrawal
24 of the reference -- the district court didn't withdraw your
25 jurisdiction over 1129(b).

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1 THE COURT: I know.

2 MR. STAMER: Okay.

3 THE COURT: I'm the one that made the recommendation,
4 remember?

5 MR. STAMER: We understand. Yeah, I do. Very well.

6 THE COURT: Judge Donato wasn't just sitting around
7 one day and saying, I think I'll take something away from
8 Montali. I'm the one that said, I have to, and he did. So
9 anyway, okay.

10 We're going to move to the motion.

11 MR. STAMER: Thank you, Your Honor.

12 THE COURT: Thank you, Mr. Stamer.

13 All right. A couple of opening comments on the
14 motion. First of all, I appreciate that a lot of progress has
15 been made in the last few days. And again, I can't even keep
16 up with all the progress being made. And to the extent that
17 the debtor, on the one hand, and various parties, the
18 government agencies and others have, when they've been able to
19 narrow issues, that's helpful.

20 I still, however, find that what's unhelpful is to
21 have and to think about that I would, under any circumstances,
22 figure out a way to approve what appears to be at least three
23 separate documents and a term sheet and two letters from
24 counsel yesterday, in the last couple days, and a proposed
25 order that's fifteen pages long. And I don't know how anybody

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1 could possibly understand what the deal is.

2 So I'm kind of struggling with why can't there be,
3 first of all, a discussion with any pending challenges.
4 Certainly, the TCC has objected on subordination issues, and
5 some of the other objections go to very specific things, but at
6 the end of the day, it seems to me that the better way to deal
7 with this would be to restate the RSA and not have a separate
8 term sheet that is supposed to -- which probably gives way to
9 the RSA if there's an inconsistency, and then have two letters
10 from Mr. Feldman, and then have a proposed order. It all is
11 almost incomprehensible.

12 So I'm -- and this really is the -- I believe Mr. Troy
13 made the objection from the federal government's point of view
14 that it's just almost too hard to sort out the words. It's not
15 that we can't read it; it's that you need a road map to figure
16 out what the deal is.

17 So that's a long way of saying I would much prefer, if
18 I am persuaded to grant the debtors' motion, to grant it in a
19 restated format so that it could be in one document.

20 Now, I understand that the subrogation group have lots
21 of members and banks and all over the country, and it's not
22 easy to round up all the cats and get them back online again,
23 but it seems to me that having a comprehensive document that
24 would put in one, four-cornered place what the ground rules
25 are, would be much more constructive.

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1 So I'll be open to what people want to say about that,
2 and I will then ask Mr. Karotkin to go ahead and tell me --
3 you're going to do this, aren't you? Where we are and where
4 you think -- what objections you still need to have me rule on?
5 Because it seems to me, a number of them, as you say, have been
6 resolved by your own representations. Is that clear? Say yes.

7 MR. KAROTKIN: May I take the Fifth?

8 I think, Your Honor, that it is not quite as
9 complicated as you think. I think that with respect to the RSA
10 and the settlement agreement, the terms are not that
11 complicated. And I think that Mr. Feldman's letter, which is
12 attached to his responsive pleading -- to which, by the way,
13 the debtors concur -- has resolved most of the objections, and
14 I think that with respect to the objections raised by Mr. Troy
15 and others as to whether or not they are included within the
16 definition of subrogation claimants, I think that's pretty
17 easy.

18 THE COURT: That's resolved, right?

19 MR. KAROTKIN: That's been resolved.

20 THE COURT: Yeah. Okay.

21 MR. KAROTKIN: And I think to the extent the U.S.
22 Trustee had some objections with respect to --

23 THE COURT: Well, the U.S. Trustee never even filed
24 anything --

25 MR. KAROTKIN: No.

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1 THE COURT: -- that I'm aware of. So I don't think
2 the U.S. --

3 MR. KAROTKIN: No. The U.S. Trustee had raised some
4 issues with us --

5 THE COURT: Right.

6 MR. KAROTKIN: -- as to fees and how those would be
7 addressed. I think that we have resolved those as well.

8 THE COURT: Right.

9 MR. KAROTKIN: So I think that what is left for the
10 Court to consider, and I think that we tried to set this forth
11 in our reply pleading, is the issue raised by the TCC with
12 respect to the made whole.

13 THE COURT: Yeah. But you realize that I got some,
14 like, sixty pages of argument late Monday evening. I mean, I
15 just -- I can only process so much. And I didn't mean to imply
16 that I couldn't understand it; I'm saying that Mr. Troy's
17 objection originally just points out inconsistencies. And
18 maybe you could -- maybe it's completely consistent to you, but
19 I don't -- I couldn't do a diagram of -- outline in one outline
20 the RSA and the settlement agreement and the term sheet and
21 then the proposed order and then the two letters from Mr.
22 Feldman. It's all one bundle --

23 MR. KAROTKIN: Well --

24 THE COURT: -- of stuff, right?

25 MR. KAROTKIN: Yes.

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1 THE COURT: It's not rocket science; it just needs to
2 be clear so somebody knows what the deal is.

3 MR. KAROTKIN: Well, I'm not exactly sure what you're
4 suggesting that we should do.

5 THE COURT: Just restate. Like frequently you will
6 restate in a plan or restate in an agreement.

7 MR. KAROTKIN: Okay.

8 THE COURT: A restatement of what the relation -- what
9 the consideration, and the tradeoff, and what's being done. I
10 mean, again, there may be some other people that want to be
11 heard and convince me that I should kill the whole thing, but
12 I'm inclined to think that you've made your case. But that's
13 really what I think is -- I mean, Mr. Karotkin, I don't know
14 how somebody who isn't completely educated in all of these
15 special areas would understand this conglomeration of
16 documents, if we just gave it to someone and said, here, try to
17 figure this out. And if you had one restated RSA, then you
18 would do it. And then you don't even need a separate motion.
19 The motion approves the RSA, right?

20 MR. KAROTKIN: Well, we certainly could do that. I
21 think it would be --

22 THE COURT: Well, is it a problem?

23 MR. KAROTKIN: Pardon me?

24 THE COURT: Is it a problem? I mean, Mr. Feldman, is
25 it a problem for your --

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1 MR. KAROTKIN: I don't think it's a problem. Mr.
2 Feldman's here, and he can address it as well. I don't think
3 it's a problem. I think that to the extent there are
4 outstanding objections, you could address them today and we
5 could submit a restated RSA that clearly sets forth the
6 agreement.

7 THE COURT: No, I think the point -- but I think the
8 point -- maybe it was Mr. Feldman's submission and not yours,
9 but one of them -- again, I started this segment by
10 complimenting the parties for making so many -- such progress.
11 But I said -- you even said, the final something would be there
12 for people to look at, right?

13 Mr. Feldman, is this --

14 MR. KAROTKIN: And I think that what is reflected in
15 the revised order I think addresses those particular issues.

16 THE COURT: Yeah, but that's my point. When the
17 revised order starts to be the most important document, then it
18 gets a little too much -- too confusing, to me.

19 Mr. Feldman, you don't have -- is this a problem?

20 MR. FELDMAN: No. It's not a problem at all, Your
21 Honor. But I want to just go back slightly, just so we
22 understand how we got here and what it is we are asking the
23 Court to approve today.

24 When we did the RSA, Your Honor, the company had not
25 yet filed a plan. So there was a term sheet --

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1 THE COURT: Right.

2 MR. FELDMAN: -- for the plan that was attached to the
3 RSA.

4 THE COURT: No, I know. I'm a fan of term sheets, so.

5 MR. FELDMAN: The plan is now on file, and obviously
6 takes care of -- it reflects the term sheet, supersedes it.

7 THE COURT: But there's already changes to it.

8 MR. FELDMAN: Let me address that as well.

9 Some of the objectors raise what we think are very
10 legitimate points that pointed out things that were not
11 intended --

12 THE COURT: Right.

13 MR. FELDMAN: -- as part of the business deal.

14 THE COURT: Right.

15 MR. FELDMAN: And so we did put together a letter that
16 attempts to address those, to the extent we were willing to
17 address them. That has to now get memorialized in a modified
18 plan that has to be filed by the company because it goes to
19 things like releases, et cetera.

20 THE COURT: Back to releases, yeah.

21 MR. FELDMAN: Yeah.

22 THE COURT: I mean, certainly the releases.

23 MR. FELDMAN: Yes. So we think that makes complete
24 sense, Your Honor. We should file -- we should create an
25 updated RSA and attach what will ultimately become the modified

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1 plan to it and ask the Court to approve that.

2 But what hasn't changed and what really needs to be
3 done today, Your Honor, would be for the Court to consider the
4 allowance of the claim at eleven billion dollars, which is
5 really core to what we're asking for.

6 THE COURT: Right.

7 MR. FELDMAN: All of the other issues, frankly, are
8 really -- go to confirmation issues, in the sense that -- and I
9 don't think they're --

10 THE COURT: No, they do. I agree with you.

11 MR. FELDMAN: I don't think they're stand-alone
12 issues --

13 THE COURT: I mean, look.

14 MR. FELDMAN: -- we ought to be briefing, so.

15 THE COURT: Let's try a simple case. In a simple
16 case, which we -- number one, this isn't a simple case. In a
17 simple case, a trustee would come in and say, I just settled
18 with this creditor here, and I'm going to pay him eleven
19 dollars. And the creditors say, yeah, I really have a claim
20 for twenty, but we're settling for eleven dollars. And you'd
21 have a simple agreement that says trustee pays eleven dollars
22 to creditor, who waives any other claim, period. And that's
23 what you're doing. And whether it's under the ANC Properties
24 (sic) principle of 9019 -- I mean, to me, that's what was
25 confusing is are there two motions or one? And I think that

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1 was Mr. Troy's argument.

2 So if under 9019 the debtor says I would like to
3 compromise with this group called the subrogation claimant, and
4 I'm doing it by virtue of this document, called an RSA, and the
5 RSA must, necessarily, be consistent with the plan, then I
6 would say, fine. That motion is evaluated under the -- you
7 know, the ANC test, and again, if objections are still liable,
8 they're overruled, and you approve it.

9 And then when our grandchildren are trying to figure
10 out what we do, they don't go back and say, where's that letter
11 from Mr. Feldman that was Exhibit B to the brief that Mr.
12 Karotkin filed the night before the hearing? You have an
13 operative document that does it.

14 MR. FELDMAN: Yes.

15 THE COURT: That's all.

16 MR. FELDMAN: And we will, Your Honor, create an
17 operative document --

18 THE COURT: Okay.

19 MR. FELDMAN: -- subject to this Court's ruling. I
20 don't think it's a difficult thing to do. And again, we are
21 asking that the Court approve the settlement under 9019 under
22 the applicable test in the Ninth Circuit, the ANC case.

23 THE COURT: Right.

24 MR. FELDMAN: And we are asking the Court to authorize
25 the debtors to enter into an RSA, which has benefits for my

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1 clients --

2 THE COURT: Of course.

3 MR. FELDMAN: -- and benefits for the debtors. To the
4 extent that part of that RSA requires the company to propose a
5 plan that has provisions people don't like, we're going to hear
6 a lot about those provisions today, but I would argue
7 vociferously, Your Honor, that we ought to address those at an
8 appropriate time. It shouldn't prevent the settlement and it
9 shouldn't prevent the RSA.

10 THE COURT: But there are a couple questions, and I'm
11 not even sure -- I mean, I tried to keep track of all the
12 objectors so I could remember to call on them if they're still
13 viable, but I have a couple of my own that you can, perhaps,
14 dispel. And that is, there's no theory under which you end up
15 with an admin claim of eleven billion dollars, is there?

16 MR. FELDMAN: There is no theory under which --

17 THE COURT: Any theory?

18 MR. FELDMAN: -- I wind up with an admin claim of
19 eleven billion dollars.

20 THE COURT: I mean, somebody made that argument, and I
21 went, this couldn't possibly be right.

22 MR. FELDMAN: But this is the law of unintended
23 consequences. We didn't say we don't wind up with an eleven
24 billion dollar admin claim, and there is an ambiguity about
25 what would happen if the company turned out to be insolvent and

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1 we had an eleven billion dollar claim, or are we asking to
2 still be paid eleven billion in cash? And we've said and
3 addressed that in the letter --

4 THE COURT: You addressed that in the letter.

5 MR. FELDMAN: -- which we will --

6 THE COURT: That's right.

7 MR. FELDMAN: -- address in the plan.

8 THE COURT: Right.

9 MR. FELDMAN: But that is, in fact, not the case.

10 THE COURT: And the other issue -- well, that. You
11 just said it. If the plan is -- well, if a competing plan is
12 confirmed, you have your eleven billion dollar claim that's
13 approved under 9019. Leaving aside whether it's the same
14 amount that's in the other plan, that's not the point. There
15 could be a third plan that had something else, but you've got
16 yourself -- you "take to the bank" an eleven billion dollar
17 settlement amount.

18 MR. FELDMAN: Correct.

19 THE COURT: With the good side and the bad side.

20 MR. FELDMAN: Correct.

21 THE COURT: Okay.

22 MR. FELDMAN: We'll take the risk on Tubbs turning
23 into a homerun, as Ms. Dumas suggested, and the company has
24 decided they'll take the risk that they win Tubbs and are
25 potentially paying us at a high number.

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1 THE COURT: Well, that's right. And they may be
2 paying you more than they might have paid you if you hadn't
3 made the settlement.

4 MR. FELDMAN: They might.

5 THE COURT: That's the nature of the settlement.

6 MR. FELDMAN: But it will not be more -- it will not
7 be more than hundred cents on the dollar, and we certainly will
8 demonstrate that in conjunction with confirmation, if we ever
9 get to that point.

10 THE COURT: And you still adhere to the conception,
11 not one of your opponents, that you have an impaired claim.
12 And presumably will vote your claim.

13 MR. FELDMAN: We do believe we will have an impaired
14 claim, and we've indicated in the RSA that we will vote in
15 favor of the company's plan.

16 THE COURT: And I believe you said at one of the prior
17 hearings that their -- originally, you had eighty-five percent
18 signup. You still may not have a hundred percent, so you still
19 may get votes against your plan by your own classmates.

20 MR. FELDMAN: Correct. But I think it's worth
21 updating the Court just on where those numbers stand today just
22 because I think it's relevant in a slightly different way, as
23 well. We are now up to 134 subrogation claimants who have
24 signed up to the RSA, Your Honor, including a fair number of
25 them who have signed up since the Court terminated exclusivity,

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1 which I think is an indicator of how they feel about the TCC
2 bondholder plan. And those 134 holders represent slightly more
3 than ninety-six and a half percent of the total subrogation
4 claimants.

5 THE COURT: And you haven't been soliciting votes in
6 violation of Section 1125, have you?

7 MR. FELDMAN: We have not been soliciting any votes in
8 violation, Your Honor.

9 THE COURT: All right.

10 MR. FELDMAN: We have been asking people to review the
11 RSA and, if they're willing to join it, to join it.

12 THE COURT: Okay. Well, we kind of got to where I was
13 concerned in an indirect way, but --

14 MR. FELDMAN: So we have more than ninety-six and a
15 half percent, and I suspect we will get much closer to ninety-
16 eight percent by the time we're done.

17 THE COURT: So why don't we make this a little bit
18 easy? By my calculation, the Governor's office and the United
19 States and, I believe, the state agencies, their problems all
20 appear to have been resolved. And so if any of their
21 representatives or counsel disagrees with that statement,
22 please speak up. If I don't hear from you, I will assume that
23 that's a correct statement.

24 So Mr. Troy?

25 MR. TROY: Matthew Troy, Your Honor, Department of

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1 Justice, Civil Division on behalf of the United States. It is
2 not a correct statement, Your Honor.

3 THE COURT: Okay.

4 MR. TROY: One of the objections was addressed by a
5 revision to the order. The other objection having to do with
6 the settlement payment condition tied to a third-party release
7 for the subrogation claim holders is not resolved.

8 THE COURT: But I thought that's been resolved. You
9 don't think it's been resolved by the way the plan would be
10 reworded?

11 MR. TROY: No, I don't, Your Honor. And I think for
12 purposes of your Court's consideration of whether or not it
13 should approve an RSA today that contains a provision like the
14 settlement payment condition is something that you should
15 consider as to whether it is appropriate for the RSA to be
16 approved today. I can go into it now if you want to or I can
17 wait.

18 THE COURT: Well, no. Say it. I mean, I thought you
19 were taken care of by provision. So what's the fatal flaw?
20 Well, you heard Mr. Feldman agree there can be a restated RSA.
21 And you haven't seen it, obviously, but --

22 MR. TROY: Right.

23 THE COURT: And I -- look, I started by agreeing with
24 you that there was a lot of internal ambiguity and difficulty
25 just parsing through. Do you still think -- well, and partly

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1 correcting it and restating it is to avoid that.

2 MR. TROY: Right. And what I've seen in Mr. Feldman's
3 letter doesn't do it.

4 THE COURT: Okay.

5 MR. TROY: So if you can, I can try to walk you
6 through it.

7 THE COURT: Yeah. Please do.

8 MR. TROY: Okay. So the point is, Your Honor, that
9 they have a restructuring support agreement. There are parties
10 to that: the debtors and the subrogation claim holders who
11 sign on to it.

12 THE COURT: Okay.

13 MR. TROY: Those are the only parties to that. As
14 part of the compromise, the overall compromise there, what the
15 subrogation holders have negotiated and demanded is that if the
16 debtor goes and negotiates with anyone else --

17 THE COURT: Right.

18 MR. TROY: -- holding a wildfire claim --

19 THE COURT: They've got to release them.

20 MR. TROY: -- they've got to release them.

21 THE COURT: And they took it out, though.

22 MR. TROY: Excuse me?

23 THE COURT: I thought they took that out. And it's
24 voluntary, the -- what I read in the reply briefs was that --
25 this gets back to, maybe it's in a Feldman letter somewhere --

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1 that that is no longer going to be operative and that it's
2 consensual, and that somebody --

3 MR. TROY: It's operative the moment the RSA's
4 approved and my clients go to sit down with the debtors and
5 negotiate a settlement -- potential settlement, of the
6 government claims, and we happily reach agreement on a number,
7 and then the debtors slide across the table to me a release, a
8 third-party release.

9 THE COURT: Because you've reached agreement with the
10 debtor?

11 MR. TROY: Correct. And that's a game changer.
12 That's a showstopper.

13 Let me give you -- try to count -- try to illuminate
14 you on this by contrasting it with another plan support
15 agreement that exists in this case. It hasn't come before your
16 Court. I'm going to walk through, real quickly, some of the
17 provisions there; I'm assuming you're not familiar with them.
18 This is with the public entities. If you're familiar with
19 them, please stop me.

20 THE COURT: Well, I'm familiar with them in the sense
21 that I approved something --

22 MR. TROY: All right.

23 THE COURT: -- previously, but --

24 MR. TROY: This is getting -- there's termination
25 events in there. The public entities negotiated termination

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1 events in there for their benefit. They can terminate the PSA
2 if these things happen.

3 One of these things is the failure of the debtors to
4 propose a plan in these cases that does not contain a third-
5 party release of the public entities. I looked at that and I
6 said, hmm. That's interesting. I might have an issue with
7 that. But that's a plan confirmation issue.

8 If the debtors do actually go ahead and propose a plan
9 that says that, I'm going to take a hard look at it. Not
10 because it's a public entity, but because it's just a third-
11 party release that runs to the benefit of the public entities
12 from everyone in the case, which is exactly what is happening
13 here: a release running to the subrogation claim holders from
14 all parties in the case for all of their claims.

15 THE COURT: Well, you say "all parties in the case".
16 The only -- that I understood, the change here was it is
17 voluntary if a creditor makes a deal with the debtor, says, I
18 will release Mr. Feldman's client. But if he doesn't want to
19 do that, he doesn't have to.

20 MR. TROY: Right.

21 THE COURT: In theory, he doesn't have to. It goes on
22 with its claim.

23 MR. TROY: But it seriously hinders the efficacy of
24 settlement negotiations when you start with the premise that
25 regardless of being able to reach an agreement on a number

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1 between us, the claimants and the debtor, you also have to give
2 this release to somebody else.

3 THE COURT: Well, it might hinder a settlement --

4 MR. TROY: Because this is what this agreement, to
5 which you were not a party to, requires.

6 THE COURT: No, I know. It might hinder settlement,
7 but is it legally prohibited under controlling law?

8 MR. TROY: My view would be yes, under ANC Properties
9 (sic) because the issue is two parties are affecting, through
10 your Court asking you to approve a compromise that effects the
11 rights of other parties. It seriously hinders negotiations
12 over a potential settlement with the debtor when this is
13 hanging out there. And it is a requirement. It is the
14 touchstone from which settlement agreements then start. This
15 has to be given.

16 THE COURT: Okay.

17 MR. TROY: And that's only my point, is that that
18 materially impacts nonparties, other creditors in the case, to
19 the RSA.

20 THE COURT: So you don't think it violates things like
21 Lowenschuss, but rather ANC Properties (sic), as best interest
22 of creditor? I mean, Lowenschuss says you can't have third-
23 party release.

24 MR. TROY: I mean, implicitly, it doesn't -- I mean,
25 it does.

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1 THE COURT: Well --

2 MR. TROY: I mean, implicitly it does. I mean,
3 they're trying to -- they're trying to thread that needle
4 with --

5 THE COURT: Okay.

6 MR. TROY: -- put that camel through the needle eye.

7 THE COURT: I'm not saying that your argument is
8 crazy; I'm just trying to say where you believe the flaw is,
9 and I think you're pointing it out there.

10 MR. TROY: I mean, ultimately, it is 9019 and it's ANC
11 Properties (sic) which says the Court shouldn't be approving
12 and RSA that impacts, that prejudices, nonparties to the
13 settlement.

14 THE COURT: And you think ANC says that?

15 MR. TROY: I believe that it does, yes.

16 THE COURT: All right, because I don't --

17 MR. TROY: At least it's a consideration that must be
18 given.

19 THE COURT: Well, I don't agree or disagree with you;
20 I just hadn't thought about it. To me, as a trial judge and
21 also my prior life on the BAP, we dealt with ANC Properties
22 (sic) all the time. But you usually go through the four major
23 factors that everybody can recite from verbatim.

24 MR. TROY: Right.

25 THE COURT: But that's a little -- this is not one of

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1 those; it's --

2 MR. TROY: Well, I'm thinking of, I think, one of
3 those factors. I mean, it is in the ANC decision.

4 THE COURT: Yeah. I know. I know. But what I'm
5 saying is it's a subtle one that doesn't come up as often as --

6 MR. TROY: Your Honor, it may be subtle, but I would
7 submit that it will have a material impact going forward in
8 this case the day after you approve the RSA, if that's in
9 there.

10 THE COURT: Okay. Thank you, Mr. Troy.

11 MR. FELDMAN: Your Honor, do you want me to address
12 one at a time, or do you want everybody to come up? This is
13 actually a fairly easy one to address.

14 THE COURT: Well, if it's a fairly easy one, have at
15 it and get Mr. Troy to sign up.

16 MR. FELDMAN: Your Honor, the definition -- again, I
17 understand it's a complicated document. But the definition in
18 the document that requires the release requires it for IP
19 claims, which are defined as wildfire claims, but excludes
20 public entities. So the provision he's complaining about
21 doesn't actually apply if the company wants to go settle with
22 his client. So that's the easiest answer, but I'm happy to
23 also address the more substantive question, which is why do we
24 have the requirement, and what's it intended to accomplish?

25 THE COURT: Well, I think --

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1 MR. FELDMAN: It's up to Your Honor whether you want
2 to hear that now or you want to hear it later.

3 THE COURT: Well, listen.

4 Mr. Troy, are you satisfied with that explanation?
5 And you can just stay there. I mean, I want to try to deal
6 with these specifics, and I didn't know you were still in the
7 game with your objection. So does that clarify it, or not?

8 MR. TROY: Yeah, I think so, if Mr. Feldman's willing
9 to stand by that representation to this Court that that is not
10 going to be a requirement imposed as part of negotiations that
11 my clients might have with the debtors.

12 THE COURT: So you're here representing your clients;
13 you're not amicus for the IP clients?

14 MR. TROY: No, I am not. But no, that's fine. I'll
15 accept that representation.

16 THE COURT: Okay. Well, again, that's the kind of
17 thing that is easily fixed in a clear draft, it seems to me,
18 so.

19 MR. FELDMAN: Agreed, Your Honor, and we'll share it
20 and make sure that it's clear.

21 THE COURT: Okay. What I'd like to do, then -- and
22 Mr. Feldman, stay there -- let's go down the list with the
23 objection. No, I mean stay nearby, but --

24 Counsel -- no, one moment. Counsel, you come up next.
25 That's Ms. Winthrop, right?

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1 MS. WINTHROP: Good afternoon, Your Honor. Rebecca
2 Winthrop --

3 THE COURT: Yeah, right. So --

4 MS. WINTHROP: -- of Adventist. We have the same
5 issues with respect to the third-party release, Your Honor, as
6 well as an additional belief that it violates AB 1054 because
7 it's a unilateral release. It is a one-way release, going in
8 favor of the insurers so that we, in order to settle, are faced
9 with a Hobbesian choice between either litigating all the way
10 through the circuit the amount of our claim, or giving a
11 release of our insurance carriers, only to allow them, since
12 it's a unilateral release in favor of the insurance carrier, to
13 come back to us and sue us for reimbursement, if they feel that
14 we have received more than that to which we are entitled. So
15 it put --

16 THE COURT: And you think that's in 1054? Again, I
17 don't -- I'll take your word for it.

18 MS. WINTHROP: Well, the 1054 requires fire claim
19 victims to be fully paid for their claims. And so it is my
20 belief that this not only violates Lowenschuss, because it is a
21 coerced, nonvoluntary release, but also it violates the nature
22 and spirit of AB 1054.

23 THE COURT: So the debtor can't solve the problem by
24 making you whole?

25 MS. WINTHROP: But Your Honor, the only way that we

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1 can -- first of all, the debtor doesn't propose to make us
2 whole; it proposed a fund which they believe will be estimated
3 to be made whole.

4 THE COURT: But you're arguing your out of the fund.
5 If you are out of the estimation, you think you're still in the
6 fund?

7 MS. WINTHROP: Well, Your Honor, we are -- even if we
8 are liquidated, we are supposed to be paid from the pot of
9 money put into the liquidation.

10 THE COURT: To the trust.

11 MS. WINTHROP: In the trust, yes. Yes.

12 THE COURT: Well, that was on -- I mean, that was --
13 that's worth clarifying because that's true with the government
14 entities, as well.

15 MS. WINTHROP: That's exactly it, Your Honor. That is
16 exactly it, Your Honor.

17 THE COURT: I mean, Ms. Dumas made the point about
18 there's already, today, she says, six billion dollars in there.
19 If she's right and that is part of the trust, that is half the
20 trust, or nearly half, right?

21 MS. WINTHROP: Yes, Your Honor.

22 THE COURT: So okay, but that's a different question.
23 That's not a 9019 question. You believe that --

24 MS. WINTHROP: Well, as Mr. --

25 THE COURT: I mean, they're related, obviously.

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1 MS. WINTHROP: Yes. Yes. I mean, it locks them into
2 an approach. And it not only locks the debtor into an
3 approach. It locks the liquidation trust into an approach,
4 which they cannot settle any claim within the purview of what
5 they're supposed to be paying out unless they absolutely demand
6 from the victim a release of their insurance carriers, when, in
7 fact, they may be now exposed to claims back from their
8 insurance carriers.

9 THE COURT: And the Adventist Health is within the
10 definition of PI --

11 MS. WINTHROP: Yes.

12 THE COURT: -- for purposes of this agreement?

13 MS. WINTHROP: Yes, Your Honor. Yes.

14 THE COURT: Okay. Well, Mr. Feldman, do you want to
15 tell me why that's --

16 MR. FELDMAN: Yes.

17 THE COURT: Is that an easy one, too?

18 MR. FELDMAN: I think it's actually fundamental to
19 what we're talking about today, Your Honor. And I want to
20 address, and I appreciate the opportunity to do it now.

21 Your Honor, there are actually two releases that are
22 embedded in the RSA, and I want to differentiate between the
23 two of them so that there's not confusion. The one that is
24 contained in the plan, which is sort of a typical
25 release/exculpation for activities that took place during the

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1 Chapter 11 case, we've now modified that, as set forth in the
2 letter, to actually be an opt-in release.

3 THE COURT: Right.

4 MR. FELDMAN: And we have to reflect that.

5 There's a second release that is not drafted, not yet
6 before this Court for approval, which will have to come before
7 the Court as part of the confirmation process which would
8 require, as outlined, that if you settle your claim, your IP
9 claim with the company, with the trust, part of that settlement
10 will be you will agree this is going to be your sole source of
11 recovery. You're not going to settle on the cheap with the
12 company and then turn around and sue your insurer, which is,
13 contrary to what Mr. Julian says, and insured on insurer
14 litigation.

15 MR. FELDMAN: One of the reasons that my clients are
16 willing to compromise their claims at eleven billion dollars is
17 so that they understand they get eleven billion dollars.
18 They're not going to turn around and pay five of it back to
19 these claimants.

20 And in a solvent company case, which this should be,
21 which is how we're going to meet AB 1054, then the IPs should
22 understand this is your source of recovery. The company's
23 solvent, and this is where you're collecting your money from.
24 And if the company turns out not to be a solvent company case,
25 then all this is off the table.

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1 THE COURT: Well, yeah.

2 MR. FELDMAN: None of the releases apply.

3 THE COURT: But let's assume it's solvent. So what do
4 I tell Mr. Troy or Ms. Winthrop about how they're going to --
5 first of all, are they hamstrung for negotiations? And
6 secondly, are they locked in to never getting a full payment?

7 MR. FELDMAN: They're not hamstrung in negotiations,
8 and they're not locked in to never getting a full payment. If
9 they choose to liquidate their claim through whatever court
10 process they decide to liquidate their claim, presumably Judge
11 Donato is going to determine that the trust has sufficient
12 value in it, and they're going to get paid that amount of
13 money. So that's the whole purpose of the estimation process.

14 But for that, Your Honor, there is no settlement.
15 There is no deal, because the whole fundamental premise of the
16 compromise is that, if you take what's available to you from
17 the trust, and presumably the trust with the IP lawyers are
18 going to create a matrix --

19 THE COURT: No, I know about --

20 MR. FELDMAN: -- that's going to be available for
21 people.

22 THE COURT: Sure. I know how that works.

23 MR. FELDMAN: Right. If you decide to get paid that
24 amount, as permitted under the matrix, then that's your
25 recovery, and you need to know that going in.

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1 THE COURT: Yeah, but -- so what happens if I approve
2 this restated RSA, you tell me there's a second release coming
3 along that will be operative under the plan -- so are part of
4 these release permissions operative under the RSA or not? With
5 people like (indiscernible).

6 MR. FELDMAN: The release that's being talked about
7 now, which would be a release of any claims against your
8 insurer -- the form of release doesn't exist. You'll have to
9 approve the form of release at some later point in time. But
10 the concept we are asking the Court to approve today --

11 THE COURT: Okay, but so --

12 MR. FELDMAN: -- that if we enter into this
13 compromise, and if we agree to an allowed claim at eleven
14 billion dollars, and the company turns out to be solvent, that
15 we will not have claims back against us.

16 THE COURT: Okay. So contrast the federal government
17 with the -- you've just clarified that Mr. Troy and the federal
18 government and therefore the state agencies also are not part
19 of this at all.

20 MR. FELDMAN: They are not insureds.

21 THE COURT: They're not insured for these purposes or
22 any other purpose, but Ms. Winthrop's client is. So Ms.
23 Winthrop's choice, if she is stuck with an order approving the
24 9019 motion, leaving aside an appeal, is it's over. She has no
25 claim to assert against your client.

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1 MR. FELDMAN: That's not correct, Your Honor.

2 THE COURT: Well, then all right. That would --

3 MR. FELDMAN: If she litigates her claim --

4 THE COURT: If she litigates --

5 MR. FELDMAN: -- gets a judgement --

6 THE COURT: If she litigates. But if she sits down
7 with Mr. Karotkin or Mr. Orsini and cuts a deal, it's --

8 MR. FELDMAN: Not without coming back to me. If she
9 cuts a deal, she's releasing me.

10 THE COURT: Well, she's got to -- if she cuts a deal
11 and she says, that's not good enough, and they say, let's get
12 Feldman and line him up, your client can always move off of
13 that position on a one-on-one basis, right?

14 MR. FELDMAN: Yes. But we're asking you to approve,
15 Your Honor, today, that if a IP accepts the settlement under
16 the matrix, accepts the settlement in a negotiation with the
17 company, that that will be their source of recovery.

18 THE COURT: So you're really wanting me to accept that
19 it's really consensual, even though it's perhaps a bit coerced?

20 MR. FELDMAN: No. What we want you to accept is that,
21 if this is a solvent company, the company should be the source
22 of recovery, and that we've compromised our claim --

23 THE COURT: No.

24 MR. FELDMAN: -- forty-five percent of our claim --

25 THE COURT: No, no. No, I --

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1 MR. FELDMAN: -- to create value for the company to be
2 able to be solvent.

3 THE COURT: Mr. Feldman, I'm aware of that. But what
4 I'm getting at is that -- let's again stick with Ms. Winthrop
5 as an example, because I don't remember what the amount of her
6 claim is, but I presume it's substantial. And so let's just
7 say it's two-million dollars. And if she sits down with the
8 debtor and negotiates anything less than two-million dollars
9 and accepts it, she's finished, because the approval of the RSA
10 makes it so.

11 MR. FELDMAN: Correct.

12 THE COURT: That's your legal defense to it. You
13 can't go after me because I didn't do it. Now, as a consensual
14 matter, you can always do it, obviously, or whatever. Okay.
15 So your view is that that takes it outside of any of the Ninth
16 Circuit case law, because it's consensual --

17 MR. FELDMAN: Correct.

18 THE COURT: -- consensual even though you might have
19 to take a different way to make yourself whole.

20 MR. FELDMAN: Correct, Your Honor.

21 THE COURT: Okay.

22 MR. FELDMAN: They have a choice. They can choose to
23 settle and accept whatever deal comes with that settlement, or
24 they can choose to pursue their claim.

25 THE COURT: Okay. Well, Ms. Winthrop, unless you want

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1 to argue anymore, I just have to figure out whether I'm going
2 to approve that. So do you want to make any more argument,
3 or -- I mean, you made your point. I got it.

4 MS. WINTHROP: Okay.

5 THE COURT: But I don't want to shut you out. Want to
6 say anymore?

7 MS. WINTHROP: One last thought, Your Honor. I just
8 want to make sure it's understood that he may be done if we
9 actually elect to settle. He may be -- his client is done. My
10 client is now open for litigation from his client. So this
11 is --

12 THE COURT: Well, but for what? I mean, if they --

13 MS. WINTHROP: The right to get reimbursed. If they
14 feel that we've been overpaid for the amount of our claim, they
15 can then come back to us and sue us for reimbursement and thus
16 get even more recovery.

17 THE COURT: Yeah, you did make that statement. But
18 they could do that now, right?

19 I mean, they could do it now. I mean, if there was
20 never a settlement, if the company is insolvent and this whole
21 RSA deal is off, if an insurance company believes they overpaid
22 an insured, they always have the right to seek to recover
23 reimbursement.

24 MS. WINTHROP: Normally, at the end of adjudication of
25 a claim, assuming the parties are in agreement, both parties

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1 exchange mutual releases. It's outside of the court system.

2 THE COURT: No, but --

3 MS. WINTHROP: It's done voluntarily.

4 THE COURT: Yeah, I understand. But what I'm getting
5 at is that you made the point in your opening comment that AB
6 1054 may be violated here because this is unilateral, not --

7 MS. WINTHROP: Correct.

8 THE COURT: -- mutual. And I'm saying, okay, but it
9 may not violate any bankruptcy principle; the question is, what
10 am I supposed to do about it? I'm not in the business of
11 enforcing AB 1054. I mean, I'm not supposed to. That sounds
12 wrong. I don't know if there is a consequence between two
13 people, neither of whom is in bankruptcy -- your client and his
14 client -- and AB 1054 is implicated. So what would I do? How
15 would I solve the problem for you? Make Mr. Feldman's client
16 give you a mutual release? I mean, it sounds like a nice thing
17 to ask for. I don't know that I can order it as a condition to
18 this settlement.

19 MS. WINTHROP: Well, the same reason why you can't
20 order Mr. Feldman's client, you should not be able to order
21 our -- or make it as a condition, a unilateral condition, to
22 our ability to settle our claim in this bankruptcy case to have
23 a release imposed on us. We believe that is not a true
24 voluntary release.

25 THE COURT: Okay.

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1 MS. WINTHROP: It's also an election of remedies,
2 because we paid good money to get our insurance policy and to
3 be able to proceed forward with that policy, and we should not
4 have to elect one or the other.

5 MR. JULIAN: Your Honor, TCC has a view on this, too.

6 MR. FELDMAN: Your Honor, I want to address the last
7 statement. There is nothing in the RSA that limits an
8 insured's ability to pursue claims against its insurance
9 company, up to the point where it then decides to settle with
10 the company. If they think we have not performed properly
11 under our policy -- it's one of the clarifying comments we make
12 in our letter -- we are not looking to release the
13 insured/insurer relationship. But I will say, if you decide to
14 take your money, you should decide to take your money.

15 THE COURT: Yeah, but -- okay. All right. I'll leave
16 it at that.

17 Mr. Julian, I was going to try to get rid of the other
18 objections first and come to yours, if you don't mind. But,
19 well, I mean --

20 MR. JULIAN: I'll argue the release later.

21 THE COURT: Well, I mean, I'd like to deal with all
22 the issues. Well, all right, you're here. You've been
23 patient. I mean, are you still adhering to the subordination
24 issue? I mean, that's --

25 MR. JULIAN: No, Your Honor. I'm speaking to the

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1 release, because we just raised it.

2 THE COURT: Well, no, I'm speaking to all the issues
3 that you raised.

4 MR. JULIAN: I will speak to the other ones, too.

5 THE COURT: Okay.

6 MR. JULIAN: But since we're on the release, let me
7 say that we have an objection, because these are not voluntary
8 releases the way they've been revised, and we believe it fails
9 under A&C and Lowenschuss. Two reasons.

10 First, in A&C Properties, the Ninth Circuit set forth
11 two rules for looking at settlements. When the settlement
12 resolves a dispute between the creditor and the debtor, that
13 dispute, that is, the amount of the allowed claim, is
14 determined under the fairness test of the four-prong test that
15 you know so well.

16 The Ninth Circuit said, when the settlement attempts
17 to address resolution of a claim between one creditor and
18 another creditor, like they're trying to do with this release,
19 there's a different test. And the Ninth Circuit said, quote,
20 "The bankruptcy court is obligated to preserve creditors'
21 rights", period, close quote, end stop. There is no exception.

22 THE COURT: That's in A&C?

23 MR. JULIAN: Yes, it is.

24 THE COURT: That's the language in A&C?

25 MR. JULIAN: And if the debtor and the subrogated

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1 claimants were here today, addressing what you started off
2 talking about, simple case, allowing an 11-billion-dollar claim
3 on 15.8 billion dollars of payments -- it's not 20 by the way;
4 it's 15.8 -- and they had put on some evidence that you are
5 going to require the fire victims someday to put on, meaning,
6 what did you pay, let's have some evidence of it -- then it
7 would be an allowed claim under A&C Properties, and you could
8 prove it.

9 But what they're doing with respect to every single
10 one of these terms is to bind the parties here, with respect to
11 things that are determined as to their fairness in plan
12 confirmation. And this release is the same one. A release and
13 a terms sheet -- or a release and a resolution term sheet,
14 pursuant to a plan, is exactly what Lowenschuss shot down in
15 principle, because it was a global release pursuant to a plan.
16 I remember --

17 THE COURT: But this is voluntary, isn't it?

18 MR. JULIAN: It's not voluntary.

19 THE COURT: You don't believe this is voluntary?

20 MR. JULIAN: Look, look. In real world, in a
21 resolution trust in a mass court case, you got to get your
22 money out of the matrix, because if everyone litigates in order
23 to preserve their claims, they bankrupt the trust. That's what
24 they're not telling you.

25 THE COURT: Well, but that's why you want to have a

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1 premium on the fund.

2 MR. JULIAN: And that's why you want to have a matrix,
3 but that's why it's not consensual. They're forcing it here,
4 and there's no question in my mind that this is a Lowenschuss
5 issue and should be certified to the Ninth Circuit if there's
6 any disagreement on this. I remember when American Hardwoods
7 came down, because it followed on the heels of A.H. Robins, and
8 the Ninth Circuit said, we're not going to do it in this case,
9 but we think maybe there will be exceptional circumstances.

10 And when Lowenschuss came up, the parties said, hey,
11 exceptional circumstances here. And the Ninth Circuit shot
12 them down with the strongest words I've ever seen. They said,
13 you misread American Hardwoods. And what they were really
14 saying colloquially is there is no such exceptional case in the
15 Ninth Circuit. This is Second Circuit wizardry. It is not
16 approved in the Ninth Circuit. And it impairs the creditors'
17 rights. We don't want to give releases to these insurance
18 companies. And if we're forced to do it in order to get money
19 out of a plan, that's not a consensual release.

20 There's no doubt in my mind that that is illegal under
21 A&C Properties' statement that the bankruptcy court is
22 obligated to preserve creditor rights, close quote, and illegal
23 under Lowenschuss.

24 Your Honor, I'll --

25 THE COURT: Well --

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1 MR. JULIAN: -- go to the next issue, which is
2 subordination. If Your Honor is saying all you want to do
3 today is approve the eleven billion dollars, I think we can
4 move on. But if part of your settlement gives them pari passu
5 treatment with the wildfire victims and does not preserve the
6 subordination rights under Section 509 of the Code, then we
7 have a problem with it.

8 THE COURT: But you haven't really persuaded me that
9 509 even applies here.

10 MR. JULIAN: Well, there's only one case in the nation
11 on it.

12 THE COURT: Yeah. Well, how about reading the
13 statute? Is the insurance company liable with the debtor?

14 MR. JULIAN: Yes, and I'll tell you why.

15 THE COURT: Okay.

16 MR. JULIAN: I had the same problem reading the
17 statute the first time I read it, and then I realized this. A
18 definition of a claim under the Code, Section 101, includes
19 both contract claims and tort claims. And the question is,
20 when you have a tort claim -- the debtor's a tortfeasor, and
21 the debtor is liable on a claim by the victim against the
22 tortfeasor.

23 THE COURT: Yeah, that's --

24 MR. JULIAN: That's a tort claim.

25 THE COURT: That's easy.

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1 MR. JULIAN: The insurance company is liable to the
2 victim on the same wildfire loss. The claim is a wildfire
3 loss. It happens to be a different theory. Both claims are
4 wildfire losses, Your Honor. The wildfire loss against the
5 debtor is a tort claim, and the wildfire loss against an
6 insurance company is on a contract claim. It's a different
7 theory. One's tort, and one's contract.

8 We have the same problem when there's a surety
9 involved -- a surety or a guarantor of a loan.

10 THE COURT: But this isn't a surety.

11 MR. JULIAN: Well --

12 THE COURT: It's not. It's different.

13 MR. JULIAN: But the statute does not limit it to
14 sureties. It's co-debtors. And that's what the Court said in
15 Dow Corning.

16 THE COURT: Well, it says, an entity that is liable
17 with the debtor --

18 MR. JULIAN: Yes, on the wildfire loss.

19 THE COURT: Well, it doesn't say -- it just says,
20 liable with the debtor. It doesn't say what on.

21 MR. JULIAN: And I'm saying it's --

22 THE COURT: But that has to be one -- well, okay,
23 that's your argument.

24 MR. JULIAN: Yeah. I understand, Your Honor, that
25 you're not the first to have a problem with this, but Dow

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1 Corning didn't have any problem.

2 THE COURT: Well, I have a problem with your competing
3 claim that doesn't subordinate them. So what am I supposed to
4 do with your plan that doesn't subordinate the people you want
5 me to subordinate under exactly the same provisions of their
6 plan? Is that not a little inconsistent?

7 MR. JULIAN: No, no.

8 THE COURT: No? How do you get around that?

9 MR. JULIAN: Well, the TCC, faced with the
10 presentation right of forty to fifty percent, looked at the
11 value of the claims and decided that if they were going to be
12 fairly valued with an arrange of 13.5 to 14 billion dollars,
13 that they would give up that right, because there's less risk
14 to being made whole in the TCC bondholder plan. Remember, Your
15 Honor, what the made whole protection in California -- and I
16 contend under 509 does -- is it's an ultimate backstop against
17 risk for under-funding in a trust or elsewhere.

18 And so as long as the TCC -- as long as the victims --
19 have that made whole protection, and if twenty-five billion
20 dollars was put into a trust, it doesn't matter what the
21 estimation is because they're going to come first with respect
22 to most of the subrogation claims -- not all of them. Right?
23 Some of the subrogation claims aren't subordinated, because
24 some of the victims didn't file claims.

25 THE COURT: Well, we don't know that.

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1 MR. JULIAN: And it's their burden. They haven't
2 given you the allocation. They were supposed to give you an
3 allocation of which of the claims are subject to made whole
4 under state law or Section 509. They lumped themselves
5 together. They did this to you and us.

6 THE COURT: When did all this happen? When did
7 they --

8 MR. JULIAN: In the term sheet. Your Honor, that's
9 exactly what they did. They lumped them together. A truthful
10 and accurate legal way to do this would have been to break up
11 the fifteen billion dollars of subrogation claims in this case
12 into claims that relate to victim claims that filed, because
13 there's subordination there in a made whole protection.

14 And then with respect to subrogation claims that were
15 paid on the 15.8 billion dollars that relate to claims that
16 were not filed in this case, then the subrogation claimants
17 would not be subject to subordination. They've lumped it
18 together and put themselves in a single class and subjected
19 themselves to subordination. This would all have to be figured
20 out at a plan confirmation time.

21 But my overall point in answering your question is
22 this: So long as the victims have the made whole rule
23 protecting them in a trust, at a reasonable amount, they were
24 fine giving up subordination. I mean, if they think that
25 they're going to get a reasonable value in the trust for

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1 themselves and they settle for that, they're fine. But in the
2 debtors' plan of 8.4 billion, they need the protection of
3 subordination.

4 THE COURT: Okay, so that's --

5 MR. JULIAN: So that's --

6 THE COURT: That's your theory.

7 MR. JULIAN: That's the rationale. But the point is,
8 Your Honor, a settlement under 9019, we believe, cannot change
9 the priorities that exist under the law. It has to be done at
10 plan confirmation. I sat here for two hours listening to Your
11 Honor very appropriately telling everyone, these are important
12 plan confirmation issues that have to be briefed someday in the
13 context of getting up to a plan.

14 We have issues here that are the same thing: releases
15 under Lowenschuss, the wiping out of subordination or 509 or
16 state law priority rights. It should be done in connection
17 with a plan for a couple reasons. You remember when we argued
18 to you that a capped trust posed a risk of less than full
19 payment to the victims, and you said, all I know from reading
20 Judge Perris's decision, more or less, is I got to estimate
21 high.

22 THE COURT: Well, I got a little help from the
23 California legislature, too, right?

24 MR. JULIAN: Yes.

25 THE COURT: Okay.

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1 MR. JULIAN: Yes. But we don't know yet know whether
2 or not Judge Donato -- what he is going to do in estimation.

3 THE COURT: That's right.

4 MR. JULIAN: And I think that this issue as to whether
5 or not this settlement is fair needs to consider a bunch of
6 things, and let me go over them. One is, how much money is in
7 the trust by virtue of the estimation proceeding? Two, how
8 much of the money in the separate trust are the victims going
9 to have to share with the public entities? We've just filed 4
10 billion dollars by FEMA, and I'm informed by the state, 2.5
11 billion dollars from the state -- 6.5 billion.

12 And I heard Your Honor many times saying a liquidated
13 claim is a liquidated claim, and if you don't change your
14 tentative ruling on that, and 6.5 comes into that 8.4-billion-
15 dollar trust --

16 THE COURT: Well, I can't change the statute.

17 MR. JULIAN: No, I know. I'm not objecting. I'm not
18 disagreeing with you.

19 THE COURT: Okay.

20 MR. JULIAN: I'm just saying we got a problem here.

21 And --

22 THE COURT: So what you're -- well, let me stop there.
23 You're telling me that every liquidated claim that isn't
24 challenged will be a claim in the trust, if that's under the
25 debtors' plan?

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1 MR. JULIAN: If it's a fire claim, yes, and it's not a
2 subrogation claim, that's true.

3 THE COURT: Yeah, right.

4 MR. JULIAN: And so let me approach it this way. The
5 debtors settled with some local state agency public entities
6 for a billion dollars. They did not bring that to you for
7 approval under 9019. They said that would be approved in the
8 context of a plan confirmation, where you'd know all the facts
9 to see if it's fair.

10 THE COURT: Right. I did approve -- did I -- I did
11 approve a billion-dollar settlement, didn't I?

12 IN UNISON: No.

13 THE COURT: Oh, the other settlement -- oh, maybe that
14 was the --

15 MR. JULIAN: No.

16 THE COURT: -- district attorney then.

17 MR. JULIAN: No.

18 THE COURT: That was the criminal charge.

19 MR. JULIAN: Yeah.

20 THE COURT: No. It was the same amount, right?

21 MR. JULIAN: No.

22 THE COURT: No, sorry. Okay. I got you.

23 MR. JULIAN: You approved a BYU settlement.

24 THE COURT: Excuse me. That's right.

25 MR. JULIAN: Yeah.

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1 THE COURT: I'm just confused.

2 MR. JULIAN: This is a billion dollars of state money
3 going out to a public entity so they -- they put it off to the
4 confirmation hearing for a reason, and I submit that's my best
5 evidence in this case of what's fair and reasonable. We have
6 to view whether or not a settlement that impairs creditors'
7 rights is fair under all the provisions of the Bankruptcy Code
8 and plan confirmation, taking into account estimation -- how
9 much are the public entities in for?

10 And the reason is because these folks, with the
11 eleven-billion-dollar allowed claim under this settlement, are
12 going to get their own trust with eleven billion bucks of cash
13 in it. And you don't know whether or not there's stock, future
14 rights, or what in the other pot, and whether or not the victim
15 claims are going to be unfairly diluted past the percentage
16 that they're getting, because of all the public entities coming
17 in.

18 And there's a rule in California, recognized by the
19 Ninth Circuit, which says -- Chandler (phonetic) case -- which
20 says, if the victim -- if the insured has sued the
21 tortfeasor --

22 THE COURT: No, I know. You've cited the Chandler
23 case, and I'm still mystified by your reliance on a case that
24 went the wrong way.

25 MR. JULIAN: Well, because --

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1 THE COURT: But that's a different story. It's the
2 only case you've cited.

3 MR. JULIAN: Because the holding was that the subro
4 could settle. But everyone's missing the last sentence of --
5 let me read it to Your Honor. "California courts have not
6 squarely addressed the core issue presently before the court,
7 namely, whether an insurer must make the insured whole before
8 pursuing a subrogation claim against the third party's
9 tortfeasor insurer, where the insurer herself has not yet sued
10 the third-party tortfeasor."

11 That's what you focused on the last hearing we were
12 in. You said it's against you. In that case, the insurer had
13 not sued the third-party tortfeasor -- the tortfeasor. Here,
14 our claimants have sued PG&E, and that's why, under California
15 law -- here's another certified issue, in my mind -- the
16 insurance companies may not settle and get their money before
17 the insureds try their cases to judge them or settle. That is
18 black-letter law in California under the made-whole rule. And
19 to say that Chandler said something differently is wrong, and
20 Chandler --

21 THE COURT: Okay.

22 THE COURT: It might have been wrong, but the case
23 went the wrong way. It went the other way. And then --

24 MR. JULIAN: Because the tortfeasor hadn't --

25 THE COURT: Okay, okay, but it still was a case that

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1 was cited for a proposition that wasn't the outcome of that
2 case. Wasn't that --

3 MR. JULIAN: Well, we don't cite it for the outcome.
4 We cite it for the statement of the rule.

5 THE COURT: Oh, okay. That --

6 MR. JULIAN: They did discuss the California cases
7 under make-whole.

8 THE COURT: Okay.

9 MR. JULIAN: So Your Honor, the point is that all
10 these terms, the cash up front, giving them cash up front,
11 versus giving the victim something -- we don't know if it's
12 cash or stock or what -- it's discrimination, and
13 discrimination should be viewed in terms of a plan, not a 9019,
14 because again, the Ninth Circuit said the bankruptcy court is
15 obligated to preserve creditors' rights. There's no exception
16 to that.

17 The RSA commits subro to vote for a plan that pays us
18 only 8.4 billion. I know that everyone says with a stroke of a
19 pen, they can just change everything, but there's no evidence
20 in front of you that that's going to happen. Your Honor, more
21 importantly, we've been around this stuff for forty years now,
22 practicing. You, forty, me, thirty-nine, more.

23 THE COURT: Well, I may act like I'm getting tired.

24 MR. JULIAN: You know perfectly well -- I'm going to
25 paraphrase what Cecily Dumas said to me, why hasn't Weil

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1 Gotshal simply, with a stroke of the pen today, come in and
2 amended their term sheet to say that the victims will get 8.4
3 billion or whatever comes out in Judge Donato's estimation.

4 THE COURT: Well, don't you think the law says that
5 for them? I mean, Mr. Julian, if Judge Donato gives them a
6 higher number, Mr. Karotkin and his clients --

7 MR. JULIAN: Because --

8 THE COURT: -- have two choices, right? Fold their
9 tent or come up.

10 MR. JULIAN: Yeah, but I talking to you about today.

11 THE COURT: Oh, okay. I understand.

12 MR. JULIAN: 9019 looks at what today is.

13 THE COURT: I understand you're talking -- you're
14 raising it today.

15 MR. JULIAN: And the evidence -- that logical
16 inference is because the equity would wipe themselves out if
17 they allow that term to go in there. And they don't -- and
18 they can't get the money. That's the inference.

19 THE COURT: Okay, well, that's another issue. Let's
20 stick with whether I act on this motion today.

21 MR. JULIAN: I think you ought to continue it to the
22 plan of confirmation hearing. Not say yes; not say no.

23 I don't think this can be fairly evaluated without
24 knowing all the moving pieces in this case. And there's too
25 much at stake here, to run the risk of a Wall Street Journal

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1 article two years from now, saying, look what was rushed. And
2 those insurance companies got exactly what they wanted on fifty
3 billion dollars of payments. They almost settled for seventy
4 cents on the dollar in California. That's what they did in
5 front of Judge Montali, and yet the victims here, as things
6 went out, had to share some money with some public entities,
7 FEMA, and California, and they got fifty cents on the dollar.

8 THE COURT: Okay. Mr. Feldman, before you respond, I
9 want to see if we got any of the other objectors who want to be
10 heard that -- because there were others, but some of them
11 have -- we've already gotten past them.

12 So Mr. -- oh, well.

13 MR. MARSHACK: Just one sentence, Your Honor. One
14 sentence.

15 THE COURT: Mr. Marshack? Just again --

16 MR. MARSHACK: I'm going to follow up on something --

17 THE COURT: -- state your name for the record, please.
18 Thank you.

19 MR. MARSHACK: Richard Marshack, representative of SLF
20 Fire Claimants, 6,000 fire victims. One comment. Mr. Julian
21 proposed that we continue this hearing, and I fully support
22 that.

23 It seems to me, reading the tea leaves coming from
24 this Court, that you're going to ultimately migrate that we're
25 going to have a mediation in this case. I think if you grant

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1 this motion, it makes mediation much more difficult. If you
2 deny this motion, it makes it much more difficult. We
3 disagree -- we think this Court should deny approval of this
4 settlement. But having said that, there are so many -- so
5 many -- issues that come out of this settlement, that if this
6 Court is going to continue this hearing, and if -- I'm sorry --
7 if this Court is going to grant mediation, this would be
8 something that should not be resolved prior to the mediation.

9 THE COURT: Okay. Thank you, Mr. Marshack.

10 Mr. Bray?

11 MR. BRAY: Good afternoon, Your Honor. Sorry, Gregory
12 Bray, Milbank, LLP, counsel for the committee.

13 Your Honor, I want to go back, if I can, to the
14 initial colloquy you had with Mr. Feldman, when you asked about
15 insolvency, administrative claims, and so on. That was our
16 pleading. And --

17 THE COURT: Yeah, but I didn't believe it.

18 MR. BRAY: Well, it -- as Mr. Feldman said, it was an
19 unintended consequence of the way it was drafted, and they've
20 offered to fix that. I'll accept him at his word, he's going
21 to fix it. We haven't seen a restated RSA as you've asked for,
22 and we think that's appropriate. But there's another
23 consequence if you sign the RSA.

24 And that is, if we're in April, May, June, whenever it
25 is, whenever we get to confirmation, if you decide that, as a

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1 legal matter, the appropriate plan to confirm is a plan other
2 than the debtors' plan, albeit the TCC plan, another plan, the
3 debtors and the subrogation claimants have the right in their
4 sole discretion to terminate the settlement agreement. The
5 subrogation claimants can assert a claim for twenty billion
6 dollars, and you will be asked, best case, to estimate that
7 claim, that we all thought had been settled at a confirmation
8 hearing, when we could have estimated it months ago as part of
9 the estimation proceeding that's going on.

10 That's what the RSA says. There are a number of what
11 I'll call anti-competitive covenants and termination provisions
12 in the document that take you to that exact spot. And even
13 more so, not only will that be the result, no plan other than
14 the debtor plan can take advantage of the settlement. Said in
15 another way, the only way the estate and the creditors benefit
16 from the settlement is if you confirm the debtor plan. And
17 said another way, the subrogation claimants, who are a party to
18 it, are obliged to vote against any other plan, even if it
19 contains the exact same treatment, and arguably oppose
20 confirmation of that plan.

21 Under the circumstances, Your Honor, we think that's
22 inappropriate. There's not enough benefit to the estate and
23 the creditors in confirming that type of a structure. We have
24 no problem at all with an allowed claim for eleven billion
25 dollars. A basic settlement, whoever -- whatever plan is

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1 proposed, as long as it pays the eleven-billion-dollar claim,
2 however it's supposed to be paid, whatever plan it is, that
3 makes sense to us. But the provisions that I'm referring to
4 are -- that are embedding in the document, section 2 and
5 section 5 -- I can walk you through them if you want, but --

6 THE COURT: No, I don't want you to do that.

7 MR. BRAY: All right. Yeah, and I don't want to
8 either, but we think that that's an inappropriate settlement
9 and that actually does -- when we talk about confirmation
10 issues, and the argument that we shouldn't be talking about
11 these issues now, it's actually the reverse. It's the RSA
12 that's really jumping into confirmation issues, and really has
13 the effect of tying your hands if you want to confirm a plan
14 other than the debtors' plan, and prejudicing creditors if they
15 vote for a plan other than the debtor plan, because there's no
16 benefit to the settlement, and we gave up the right to estimate
17 these claims --

18 THE COURT: Well, what happened -- wait a minute.
19 What happens if the two plans that we've been talking about all
20 day today are both confirmed -- I mean, are both eligible to be
21 confirmed.

22 MR. BRAY: Right.

23 THE COURT: What happens to the subrogation eleven
24 billion?

25 MR. BRAY: If you have the --

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1 THE COURT: Is it gone or not? It's not out the
2 window, is it?

3 MR. BRAY: Yes.

4 THE COURT: Why?

5 MR. BRAY: If you confirm --

6 THE COURT: Well, I didn't say if I confirm. I said
7 we have two ready confirmable, and then I have to make a choice
8 under the statute. The creditors -- we got a debtors' plan and
9 a senior debtor bondholder's plan, TCC's plan. And they both
10 pass all the hoops to confirm, then I'm down to 1129(c), right?

11 MR. BRAY: Right.

12 THE COURT: So if I choose the debtors' plan, then Mr.
13 Feldman gets his eleven billion dollars, right? And there's no
14 down -- there's no --

15 MR. BRAY: Right, if you choose --

16 THE COURT: -- the sky doesn't fall.

17 MR. BRAY: Yes, but if you -- the creditors -- because
18 I'm going to view this in the perspective, what's the benefit
19 to the creditors in settling with the subrogation claimants
20 right now? That's my job. And --

21 THE COURT: Yeah, that's right.

22 MR. BRAY: -- the only benefit we get from that occurs
23 if you confirm the debtor plan and no other plan, which we're
24 opposed to. Essentially, it basically thwarts the lifting of
25 exclusivity or puts a significant dent, and the whole purpose

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1 of lifting exclusivity was to promote competition, because we
2 will be penalized. In your scenario, both plans go to the end,
3 and you have to make a decision. And argument will be made to
4 you, essentially, to the effect, if you confirm the creditor
5 plan, the subrogation claimants have the right to terminate the
6 settlement. They don't have to accept the eleven-billion-
7 dollar treatment.

8 THE COURT: Well, but wait a minute. What would be
9 the consequence of the confirmation of the competing plan,
10 which treats them by giving them eleven billion dollars?

11 MR. BRAY: We would have had -- we'll have a contested
12 confirmation hearing.

13 THE COURT: Well, well. But what I'm saying is --
14 and --

15 MR. BRAY: They'll assert a claim for twenty billion
16 dollars.

17 THE COURT: -- that I -- but I just go to the
18 question. If I have two plans that are confirmable --

19 MR. BRAY: Right.

20 THE COURT: -- not if -- because if Mr. Feldman and
21 company object and persuade me that the competing plan is not
22 confirmable, then we don't have two confirmable plans. So --

23 MR. BRAY: But they're obliged -- they're actually
24 obliged to oppose the payment in receipt of the eleven billion
25 dollars that they've agreed to take from the debtors' plan.

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1 That's the problem with this. They're under affirmative
2 obligation to oppose that plan structure, and essentially force
3 a contested confirmation on you, and will likely stand up in
4 front of you and say, my claim was filed for twenty billion
5 dollars, not eleven billion dollars; you haven't estimated my
6 claim. I'm entitled to the twenty-billion dollars or we'll
7 estimate it later, reserve for the twenty billion dollars --

8 THE COURT: Might not even --

9 MR. BRAY: -- that we'll fight about.

10 THE COURT: But it might not be estimatable.

11 MR. BRAY: It's estimatable now; they've admitted it
12 is. They've basically said the benefit of the settlement is we
13 don't have to estimate the claim. That's undisputed.

14 THE COURT: Well, what I'm getting at is if I -- well,
15 okay, I'm not sure I follow that, but listen, I'm getting to a
16 point where I just can't keep track of all this.

17 MR. BRAY: I understand, Your Honor.

18 THE COURT: So what I'm inclined to do is make sure
19 that any objection that I haven't given an opportunity to
20 speak, speaks. And then I'm going to take Mr. Feldman up on
21 his offer to show me a revised document. But I'm not going to
22 rule on it. I'm going to put this over to the next hearing,
23 which I believe is our November 13th date. And between now and
24 then, I'm going to study again the cases that both of the
25 opposing counsel were arguing. I mean, I know -- I thought I

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1 knew ANC by heart, but I want to reread it, and Lowenschuss and
2 the Chandler case.

3 And Mr. Feldman, I'm not prepared to say that I'm
4 going to overrule these objections. I'm not persuaded to --
5 persuaded that I'm not. I'm just -- I'm reaching a point and I
6 can't be the only one that's just trying to absorb all this,
7 with so many things to keep track of. And -- so I guess the
8 question for you, Mr. Feldman, is when are we likely to see a
9 revised RSA and document, so that one of us here in the room
10 can look at a clear head and read it?

11 MR. FELDMAN: Your Honor, before I address that, the
12 question I want to ask you is, are you going to take argument
13 in November for --

14 THE COURT: Yeah, I think so. And I think I will. I
15 think what I'd like to do -- that's the point. I might --
16 unfortunately, the November calendar is starting to get pretty
17 crowded, and I know how important the motion to extend the
18 claims deadline is, but yes, I would certainly hope to perhaps
19 frame a couple of points that I'd like to focus on, before
20 that. So if you tell me you can't get it for a while, I'll
21 understand that. But I also -- I'm just trying to absorb it
22 all, so.

23 MR. FELDMAN: Yeah, I believe we should be able to
24 file amended documents, Your Honor, by early next week. I
25 think it should be Monday, but I'm going to say Tuesday.

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1 THE COURT: I'm not going to hold you to it. I mean,
2 if that's the time frame --

3 MR. FELDMAN: Just because it's a lot of people.

4 I want to raise one other issue, Your Honor, and
5 again, this just is factually correct. I don't anticipate a
6 problem, but the RSA itself has a drop-dead date that will
7 occur before that --

8 THE COURT: I know.

9 MR. FELDMAN: -- so we have to get our clients --

10 THE COURT: And I don't --

11 MR. FELDMAN: -- to agree to an extension.

12 THE COURT: I don't feel terribly worried about that.

13 MR. FELDMAN: I'm not -- I appreciate it. I'm saying,
14 we may free up your calendar for November, if my clients are
15 not in agreement to go forward --

16 THE COURT: Well, of course.

17 MR. FELDMAN: -- but that'll be our issue.

18 THE COURT: Of course. But I will be surprised, and I
19 don't think any of you are in this for the short term.

20 So my point is that that I'm the one that has to sort
21 through all this with wonderful help that I've gotten from so
22 many capable and thorough lawyers and their arguments. But it
23 would be helpful for them, as well as me, to see the restated
24 document, not that I'm going to invite more objections. But
25 between now and November 13th, I'm going to give thought, not

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1 only to the issues we've talked about here, but also the
2 question that Mr. Marshack touched on and other counsel talked
3 about, the mediation issue, and all that other things.

4 And so, I mean, that's really the best I can do.

5 MR. FELDMAN: I appreciate it, Your Honor. It's been
6 a long day. It's hard to let some of the arguments that are
7 frankly very specious, that have been raised to go, but I will
8 let --

9 THE COURT: How about the meritorious ones? Are
10 they --

11 MR. FELDMAN: I will let them go until a later date,
12 and I guess the only other point I would make, Your Honor, is
13 that we are here today, in part because of the direction that
14 this Court has taken these cases. And so --

15 THE COURT: Right.

16 MR. FELDMAN: -- obviously --

17 THE COURT: No, I'm --

18 MR. FELDMAN: -- if we're going to go a different
19 direction, we're going to go a different direction. The
20 estimation and Tubbs trial continue. And we are continuing to
21 participate in them. So there is some pressure to have this
22 heard one way or another --

23 THE COURT: Oh, no, I understand that.

24 MR. FELDMAN: -- sooner rather than later.

25 THE COURT: I understand.

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1 MR. FELDMAN: And we understand the November date will
2 be the date.

3 THE COURT: Well, I mean, that's the best I can do,
4 because there's just -- well, for all those reasons.

5 There's someone else standing up. Did you want to be
6 heard?

7 MR. QURESHI: Yes.

8 MR. FELDMAN: I'm going to reserve the right to argue
9 against Mr. Qureshi, if he's going to argue the merits right
10 now, Your Honor.

11 THE COURT: No merits, Mr. Qureshi.

12 MR. FELDMAN: I'm not waiting until November for that.

13 THE COURT: Mr. Qureshi, no merits.

14 MR. QURESHI: Your Honor, Abid Qureshi, Akin Gump, on
15 behalf of the ad hoc noteholder group.

16 There is one provision that I think it would be
17 beneficial to have the Court aware of at this time, because it
18 is a provision in the RSA that Mr. Feldman, I believe, is of
19 the view he is bound by now, and it is having an impact. And
20 the specific provision that I'm referring to, Your Honor, is
21 the provision that precludes the subrogation holders from --
22 and I now quote; it's paragraph 2(b)(2) -- "Directly or
23 indirectly, encouraging or participating in the formulation of
24 any alternative restructuring or settlement of the" --

25 THE COURT: Oh, no, I had seen that before, yeah.

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1 MR. QURESHI: -- "subrogation claims." Right, so --
2 and --

3 THE COURT: But I thought they backed off of that
4 already.

5 MR. QURESHI: I don't think they have, Your Honor, so
6 they quasi backed off in the sense that they said if Your Honor
7 orders mediation --

8 THE COURT: No, no.

9 MR. QURESHI: -- the subrogation holders are free to
10 attend the mediation, although at that mediation, they are tied
11 at the hip with the debtors.

12 THE COURT: That isn't the provision I --

13 MR. QURESHI: The difficulty with that provision
14 present --

15 THE COURT: I thought there was a provision that just
16 walked back the issue that the subrogation and the debtors
17 together aren't free to talk to other parties. The together is
18 not ignored. I know that's there.

19 MR. QURESHI: It's the together part.

20 THE COURT: It's the together --

21 MR. QURESHI: So, Your Honor, where we presently are
22 with respect to the creditor plan and the subrogation holders
23 is we have said we will give them the same eleven-billion-
24 dollar allowed claim, and they have taken issue, as Your Honor
25 saw in connection with exclusivity. They filed an objection,

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1 and they said, well, the treatment -- the form of consideration
2 is not the same. And we have said, we would love to negotiate
3 with the subrogation holders, the form of consideration. Under
4 the debtor plan, there is a provision that allows them either
5 to take eleven billion dollars in cash or, if they choose to
6 elect, equity.

7 THE COURT: Right.

8 MR. QURESHI: Now if we can't negotiate with them,
9 Your Honor, because of this provision, that should not be the
10 case. We are prepared to offer eleven billion dollars in cash
11 to make it equivalent to what is in the debtor plan, but again,
12 we don't know what they want. They have an election in the
13 debtor plan that allows them to take equity. We have not been
14 able to engage substantively with them.

15 If Mr. Feldman is not bound by this provision, then it
16 would be helpful if he made that clear on the record, so that
17 we can, between now and November the 13th, have discussions
18 with the subrogation holders, to see if we can get to a
19 settlement that is the same as the one in the debtors' plan.

20 And Your Honor, frankly, the debtors should have no
21 objection to that. If they are acting as a true fiduciary
22 here, they tout the benefits of the eleven-billion-dollar
23 settlement, it should be available under any plan, not solely
24 under theirs.

25 THE COURT: So what do you want me to do? Ask Mr.

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1 Feldman if he's free to negotiate with you?

2 MR. QURESHI: Yes.

3 THE COURT: Mr. Feldman? Are you free to negotiate?

4 MR. FELDMAN: Your Honor, as I said in my letter, we
5 are free to participate with the debtors in negotiations --

6 THE COURT: But it has to be jointly?

7 MR. FELDMAN: Jointly. And we're happy to do that.

8 It goes to the fundamental issue, Your Honor, you raised when
9 you terminated exclusivity. Would this bring parties together
10 or would it push them apart? Unfortunately, it's had the
11 latter reaction. But I would also say, if it's eleven billion
12 dollars in cash, I accept.

13 THE COURT: Anyone else want to be heard?

14 Are you standing up to leave?

15 MR. ZUMBRO: No, just one housekeeping issue with --

16 THE COURT: Yeah.

17 MR. ZUMBRO: -- if we're done.

18 THE COURT: Yeah, go ahead.

19 MR. ZUMBRO: Paul Zumbro, for the record, Your Honor,
20 with apologies to your stomach and to everybody else's --

21 THE COURT: No, my stomach's okay. I'm --

22 MR. ZUMBRO: Very quickly. I am pleased and somewhat
23 surprised to report that the meet-and-confer process on the fee
24 examiner protocol issue was successful.

25 THE COURT: All right.

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1 MR. ZUMBRO: I just wanted to let Your Honor know
2 that. Tomorrow, the debtors will be filing a joint submission
3 on behalf of the debtors, the TCC, the UCC, and the fee
4 examiner, with the revised fee-examiner protocol that resolves
5 all of the parties' issues on the protocol, other than the
6 nonworking travel issue, which is under submission to the
7 Court.

8 I should note the U.S. Trustee's Office is still
9 finalizing its review, and they may have some changes they wish
10 to make, or they may wish to have some reservations read into
11 the record, but in any event, I don't believe any of those go
12 to the substantive -- the substance of the matters that are
13 covered by the protocol, which, as we discussed last time, in
14 any event, is a form of guidance for the case. It is not a
15 court order.

16 And we will also be filing tomorrow, as Your Honor had
17 requested, a statement by Ms. Janet Loduca, who's the senior
18 vice president and general counsel of PG&E Corporation,
19 addressing the nonworking travel issue, as well as certain of
20 the other issues --

21 THE COURT: Okay.

22 MR. ZUMBRO: -- as requested by you, and we hope that
23 statement will aid the Court in resolving the open issues.

24 THE COURT: Okay, so I'll look forward to that, and
25 then I'll take that, and it would be fully submitted at that

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1 point.

2 MR. ZUMBRO: Correct.

3 THE COURT: Okay, thank you everyone --

4 MR. ZUMBRO: Thank you.

5 THE COURT: -- for the long day, and the long morning,
6 and I will do my best to make some progress and let you all
7 know. Thank you very much.

8 IN UNISON: Thank you, Your Honor.

9 THE CLERK: All rise.

10 (Whereupon these proceedings were concluded at 2:21 PM)

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C E R T I F I C A T I O N

I, Aliza Blumenfeld, certify that the foregoing transcript is a true and accurate record of the proceedings.



/s/ ALIZA BLUMENFELD, CET-634

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Date: October 24, 2019

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